Supreme Court of the United States.

DECEMBER TERM, 1868.

No. 80.

7

Agawam Woolen Co., Appellant,

vs.

Eben D. Jordan.

APPEAL FROM THE CIRCUIT COURT, U. S.

MASSACHUSETTS DISTRICT.

APPELLANT'S POINTS AND ARGUMENT.

BOSTON:
ALFRED MUDGE & SON, LAW PRINTERS, 34 SCHOOL STREET.
1868.

Agawam water company v. Ben Water

Water & Gold Mfg 1826.

Decree - 2.

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Judgment

Decree for Gold - Claimant to Water

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and - Agreement [illegible]

after - [illegible]

and sold on sale, and in public use with his consent and

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DECEMBER TERM, 1868.

AGAWAM WOOLLEN COMPANY, DEFENDANT AND APPELLANT,

vs.

EBEN D. JORDAN.

APPEAL FROM THE CIRCUIT COURT, U. S. DISTRICT OF MASSACHUSETTS.

APPELLANT'S POINTS AND ARGUMENT.

On the fifteenth day of December, 1826, letters patent were granted to John Goulding for an "improvement in the mode of manufacturing wool and other fibrous material." These were surrendered and re-issued on the twenty-ninth day of July, 1836, and expired on the 15th December 1840.

On the 3d August 1862, the Commissioner of Patents under the authority of the act of Congress passed on the thirtieth day of May, of the same year, "for the relief of John Goulding" renewed and extended the last-mentioned letters patent seven years from that date, subject to certain conditions and limitations in the act of Congress expressed.

In June 1864, the plaintiff having acquired title to the extended or renewed letters patent surrendered the same and obtained in his own name the letters patent, dated June 28, 1864, the subject of this suit, and which the defendant corporation is charged with having infringed.

The defences set up in the answer and relied upon in this Court, are

First. That the combinations set forth in the several claims of the specification were first invented by Edward Winslow, and that neither of them was original with said Goulding.

Second. That at the time of Goulding's application for a patent, the invention had been on sale, and in public use with his consent and

allowance for a long time, (more than two years,) and that he abandoned the same to the public.

Third. The re-issued letters patent of 1864, are not in conformity with the act of Congress aforesaid for the relief of John Goulding, nor do they contain the limitations or conditions of the extended patent etc., and are therefore void.

Fourth. That the defendant's machinery having been in use before and at the time of the granting of the patent of 1864, were within the saving proviso of the aforesaid act of Congress.

There are other grounds of defence set up in the answer, but, the attention of the Court is more especially directed to these enumerated which we propose to consider in their order.

I. That Goulding was not the inventor of the combinations claimed in the patent, but that they were invented by Edward Winslow.

Nearly half a century has passed since the events which are the subject of this investigation occurred, and nearly all of those who took part in them, or had personal knowledge of them, have been dead many years, and it is believed that the testimony of *all* who are known to be living is upon the record before this Court. The loss of testimony by the death of witnesses more seriously affects the *defendant* in a patent cause, as by the rules of law the burthen is upon him to overcome the presumption in favor of the plaintiff accorded to his patent. Although extraordinary efforts have been made, and ingenious means employed to impair the credit due to these witnesses, yet we feel assured that their positive statements of facts corroborated by circumstances of no less importance than the declarations and conduct of Goulding himself, will be found sufficient to enable the Court to arrive at a correct judgment upon this as well as the other issues presented for its determination.

The present patent is "for improvements in *machinery* for the manufacture of wool and other fibrous material." The original patent and the re-issued patent of 1836, was for "an improvment in the *mode* of manufacturing wool and other fibrous material," (p. 206,) (p. 506, No. 2). And the claim in the present patent is for the several combinations of machinery or apparatus set forth, in each and every one of which several combinations, the apparatus composed of a spool resting upon a

drum which actuates it, is an essential and indispensable element, and without which the machinery would be of no value whatever.

Now it will not be pretended that John Goulding was the first or an original inventor of what was and is called the long or endless roll, or the first to invent carding machines for producing it. This was invented many years before in England, as copies of English patents in this case show, and in this country by Lowder & Whiting, woollen manufacturers, carrying on business in his neighborhood as early as 1818, and subsequently patented by them, (page 363, dep. Samuel G. Whiting,) and their operations were well known to him, as in 1820 he had one of their machines running in his own mill at Halifax, Mass., and then known as, and called, the Lowder Machine, (p. 860, dep. Isaac C. Bosworth, p. 859, dep. Daniel Bonney).

In June, 1824, Lowder & Whiting obtained letters patent for the machinery for carding the long or endless roll or untwisted roving. This did not differ essentially in construction or mode of operation, while carding and delivering the rovings from the doffers, from those now in use, except that the rovings were delivered into cans and spun from the cans instead of run upon and spun from spools (p. 488. Whiting & Lowder's patent specification).

In 1824, Goulding procured one of these machines, and set it up in his factory at Dedham, about a mile from Lowder & Whiting's factory, and it was while he was operating this carding machine that the change was made by the substitution of the spool and drum for the cans, in taking the rovings from the carding machine, and in spinning it on the jack.

This was an important improvement, for it was by this means that the long or endless roving was made practical — the difficulties of kinking, doubling, etc., incident to the use of cans being entirely overcome by this substitution of the spool for the cans.

The history of that change and the circumstances which led to it are given by Mr. John D. Cooper, in his deposition, commencing on page 67.

Edward Winslow the inventor of this improvement was a machinist, and superintendent of repairs at Goulding's factory, when the facts related by Cooper occurred, and Cooper was then and had been some years in Goulding's employment.

In answer to int. 5 (p. 67), he says:

"In the spring of 1824, Mr. Goulding sent me to Lowder & Whiting's to make some listing yarn, and to see what I thought of Mr. Whiting &

Lowder's plan of making the perpetual roll, as we called it then. I went there and labored some few days — a number of days — got through with my work and came back to the old place.

"Mr. Goulding, when I came into the mill, asked me how I got along, and how I liked the plan of making the roll in that way. I told him the principle was good, but it plagued me very much about the roll stretching, about their coming out of the box, and sometimes they would come out double; they would kink up, and in consequence of that — that is the stretching and kinking up — I would make some large threads and some small ones. I told Mr. Goulding we never could make even yarn in that way — that we must wind it up on a spool or a bobbin.

"Mr. Goulding says, you do not know anything, and left me and went out of the mill. Then we went to work on the carding machines, and put them in order for making the perpetual roll, and let the rolls run into the boxes the same as at Whiting & Lowder's; and we had — I had — the same trouble as at Whiting & Lowder's. Then they made the box with partings in it, so each parting should take one roll. That way did not improve it much. I said to Mr. Winslow that we must wind it up on a spool, for we never should make yarn unless we went to work in that way. Then he says, how can we speed it? I told him I thought I could do it with two cone pulleys. While the speed increased on one it would decrease on the other. He says that we can never get speed accurate enough in that way. He said he could do it in another way — make a drum and lay the spool on the drum and then it would go with proper speed. I said to Mr. Winslow, we have got this same thing right before us in principle — the lap drum and the roller that lays top of it; take the wool from the drum, put it over the roller, the drum goes, and carries the roller and winds up the wool. He said that he would make a drum and spool from pasteboard. I went with him into the west end of the factory and picked out the pasteboard. Mr. Winslow took it under his arm, went to the machine shop, and turned some heads for both spool and drum. About the second day from that time he brought them to the factory. We went to work, Mr. Winslow and myself, and attached it to the condenser to wind the rolls up that had formerly gone into the boxes. Mr. Winslow says, how be we going to get it off? I told him I did not know. Mr. Winslow says the thing that got it on, reversed would take it off. We took the frame that the spool and drum was on, set it out on the floor. I took hold of

the ends of the rolls. Mr. Winslow turned the drum by hand. I travelled backward, and the rolls came off well. Mr. Winslow then went to work and put the spool and drum on to the jack as we called it, so when there was length enough of roving or roll off the spool to make the thread, this dog by hitting another piece of iron would let the jaws shut and the spool and drum stop at the same time; the day we got going Mr. Goulding came into the mill and came round to the jack. Mr. Winslow and myself and Mr. Goulding stood together. Mr. Goulding says, "Winslow, you have got it;" I will give you twenty-five hundred dollars and half we can make out of it. I went round, took hold of the jack to spin; my leather belt slipped, the rolls all broke off, stretched off. Mr. Goulding says, "it isn't worth a cent; I would not give a fig for it," and left the mill. Mr. Winslow then went to work and put on iron gearing cog-wheels, and when we got the speed right, it went well. We then got all the carding machines and spinning machines altered over for making yarn from the rolls that came from the spool. During the summer we got it into successful operation.

In answer to int. 6, (p. 68), he says, "Mr. Goulding never saw that spool and drum until he came into the mill when we had it on the jack." "He spent most of his time in Boston and went home at night," (p. 69, ans. to int. 7.) On p. p. 89-90, ints. and answers 29–30–31, he says, after his return from Whiting & Lowder's, a change was made in feeding the cards, — instead of running the roving on to the floor as it came from the breakers, he proposed to Mr. Winslow to wind it on a spool and drum, and "he fixed the spool and drum with the other fixtures, and put it agoing; then we took the feed-board from the finisher and made a kreel, as we called it, on a half circle, put those spools on to the kreel, and put what we called wooden fingers up to the feeders, then put that roving from the spools between these fingers, and the breakers, — feeders would say, — carried it into the finishing machine."

The attempts to impeach the credibility of this witness will be noticed hereafter.

That this is a true account of the origin of that invention, does not depend upon the unsupported assertions of Mr. Cooper.

Convincing proof of the fact that Edward Winslow was the inventor of the application of spool and drum to the wool machinery, will be afforded by the conduct and declarations of John Goulding, inconsistent with any other hypothesis than the truth of Mr. Cooper's statement, to which we call attention.

About a year after Mr. Winslow left his service, and had removed from the State of Massachusetts, Mr. Goulding obtained four patents, each covering a combination of spool and drum with the other machines, substantially as claimed in the present patent.

These patents were dated respectively, December 15, 1826, for "the method described by which the sliver or roving was received or wound up on any carding machine on bobbins by means of drums."

April 27, 1827, for "the method described of feeding the second carding machine, for the combination of the spools containing rovings with the carding machine."

August 24, 1827, for "the method described in which the sliver or roving was unwound or delivered on a mule spinning machine or drawing frame by means of drums, delivering it from bobbins" (spools).

February 16, 1829, for "the method described of feeding the third carding machine or finisher, by the combination of the spool containing rovings with the carding machine."

On the 27th of September, 1827, Goulding commenced suit against Ephraim H. Bellows, for infringing the patent for unwinding on the jack; this suit was continued from time to time until the May term 1829, (exhibit L, p. 203,) at which non-suit was entered, and judgment rendered for defendant for costs.

In the spring of 1829, he commenced four suits by writs returnable at the May term of the Circuit Court, at Boston, dated respectively, March 12, against Nathaniel Stevens, on the patent dated December 15, 1826; and the patent dated August 24, 1827, (Exhibit H, p. 202).

March 23, against H. McFarland, on patents Dec. 15, 1826, and August 24, 1827, and another (Exhibit, I).

Another same date against Amos Hill, on the same patents (Exhibit K, 203).

March 24th, against John Marland on all the patents (Exhibit I).

March 27th, against Washburn and Goddard on all the patents (Exhibit G, p. 202).

Neither of these suits were entered in Court. They were all abandoned, and for the same reasons that he abandoned the suit against Bellows which are set forth so fully in the deposition of James C. Dunn, (p. 98,) that we transfer it to these pages. Mr. Dunn was during many years Treasurer of the City of Bostor, and from 1829 to 1832, he was Managing Agent in Boston for the Ware Manufacturing Co., of which Mr.

Bellows was the General Manufacturing Agent and Superintendent, the suit was brought against him for the acts of the company, and Mr. Dunn took an active part in preparing to defend that suit at the coming term of the Court to which it had been continued.

In answer to interrogatory 7, he says,—"I had an interview with Edward Winslow at the Indian Head Woollen Factory at Nashua, in his private room. When I first called at his room, his retiring room, I was told that Mr. Winslow (was) engaged. I waited in the large waiting-room some ten minutes or more. The door of Mr. Winslow's private room opened. Mr. Goulding passed out and I passed in. I asked Mr. Winslow if he was the man who made the first application for that mode of spinning wool. He said he was. I told him I had been sued, or my company had, by Mr. Goulding, who claimed to be the man; that I should want him as a witness in the suit. He asked me how much I would give him. I told him I could make him no promises of reward; if he was an honest man he would tell the truth. He replied that Mr. Goulding had just promised him a considerable sum if he got a verdict against me; and a further sum, a portion I have forgotten how much. The sum total which Goulding expected to recover was very large; altogether something over one hundred thousand dollars, and a further sum when he should recover from other manufauturers. I remember Winslow's proportion was so large of the one hundred thousand dollars that I feared he would go off and not make his appearance here in Boston. He did come, however, and I took him to my counsel, Samuel Hubbard and Charles G. Loring. I left him in Mr. Hubbard's office, and the next day I saw my counsel and they told me they were entirely confident that his testimony would settle the case in my favor or the Company's favor. Soon after, I think it was the next day, Mr. Goulding came to my office. He proposed to give my Company a release for all the machines we were using if we would allow him to get a verdict. I rejected the proposition. I told him I thought such an agreement would be a collusion. He left me. His counsel abandoned the suit."

And, as we say, for the manifest reason that he dare not press his demands in the presence of Edward Winslow, and there was no other course to pursue than to abandon this suit and those recently commenced returnable at the same term — as the same counsel were engaged for the defendants in those suits.

The interview between Dunn and Goulding was about two weeks

before the commencement of the May term. Winslow was summoned on the 17th April (p. 204), and it was about a fortnight after that he came to Boston. (Dunn's dep. p. 100, cross-int. 5, and ans.) What other reason can be conjectured even for abandoning their suits within a month after they were commenced, but the impossibility of maintaining them against the testimony of Winslow?

Goulding denies that he ever made such a promise to Winslow, but he does not deny any of the statements in Mr. Dunn's deposition, but he says that his poverty and that alone prevented him from going on with his suits. On p. 364, he says: there were no other reasons why the trials did not go on but his pecuniary embarrassments; and in answer to int. 146 he in substance says, that from the Fall of 1828 to 1843 he was not in a pecuniary condition to prosecute persons infringing. Now this, with all due deference we submit is not the reason.

If as early as the Fall of 1828 he was not in a pecuniary condition to prosecute infringers, how is it that he had the four writs made and served in the month of March, and but a week or two before he abandoned them? Will it be believed that he abandoned those suits because he hadn't the means to enter them in Court? He did not intimate to Mr. Dunn that he was unable to prosecute for want of means, the suit against Bellows.

But we do not rest on this; there is positive and incontrovertible proof that this statement of the reason why the trials did not proceed, viz, the want of means to prosecute, is not true.

In 1828 he started a second machine shop in Dedham, near the Common, and he also went into the manufacture of flannels. He put into that establishment six carding machines, three jacks, one warper, twenty looms, steam engine, boilers, fulling-mill, and carried on that business in addition to that of building carding machines, in 1828 and 1829, and this was all clear of encumbrance until November, 1829. (p. 462. cross-int. 999.)

May 25, 1829, he received $1,740 from Shore & Co., for a set of machinery sold and delivered some time before. (p. 303. Exhibit 17, dep. of John Eddy.)

In November 21, 1829, he raised $2,830 on mortgage of real and personal property, to pay the expenses of a voyage to Europe for the purpose of perfecting his French patent on this invention (p. 476), and in answer to cross-int. 681 he says, he was accompanied by his wife on this voyage and made a visit to England also.

In 1829 he sent one of his workmen named Upham, to France with a set of carding machinery, which must have been in progress of building some months, at an expense of not less than $3,000, to save his French patent. (p. 450, cross-int. and answers, 891, 892 and 893.)

Thus he could spend thousands of dollars to secure his French patent and yet he was too poor to raise the few dollars necessary to establish his American patents.

He carried on business in Dedham for the period of six or seven years from and after 1826 (pp. 421, 422), the whole time making experiments (p. 470). Among other experiments showing a command of means he "got up" and built a steam engine to run on common roads. (p. 422.)

He admits that he had abundant means from others to carry out his enterprises with other inventions, yet this the most valuable of all, that which he says was to "revolutionize the world," he had to abandon to the public for the want of a few dollars to enforce his rights against infringers.

In April, 1832, he commenced an action against Benjamin F. Smith (p. 205, Exhibit N.) for infringing his patents dated June 11, 1829, July 21, 1829. The former being for an improvement in the mode of taking the wool more readily from the doffer by fluted strippers, the latter "consisting in the crossing of the wool while it is delivering from the card and before it is carried through the tube" (p. 213). Now these patents do not cover the combination of the spool and drum or kreel, as these combinations are all covered by the patents before-mentioned, dated respectively, Dec. 15, 1826, April 27, 1827, August 24, 1827, February 16, 1829. His poverty did not prevent him from bringing this action for infringement of his patent for the stripper and his patent for crossing the wool. Why did he not include in that suit, a claim for infringing the other patents covering the most important and valuable parts of this invention; the several combinations of the spool and drum for winding up the roving from the card and unwinding it on the jack and the combinations of kreel with spools for feeding the cards. Now by the testimony of Henry Goulding it appears that the defendant had made and sold large numbers of these machines both cards and jacks and had carried on the business in competition with John Goulding several years. Employing fifty hands and making on an average one hundred and sixty jacks and the same number of carding machines a year, embracing all the improvements described in their several patents. (p. 93, — cross-examination, p. 94 et seq.)

The only conceivable reason why those patents were not included in that declaration is that he and his counsel well knew that he could not maintain a suit upon them.

If it had been true, as he alleges, that he abandoned the suits *vs.* Bellows and the other manufacturers in the spring of 1829, for the want of means to prosecute them and for no other reason, would not Mr. Webster, who was his counsel when these suits were abandoned (Goulding's ans. to 145, p. 363), and who was his counsel in the suit *vs.* Smith, (p. 365, int. 157,) have embraced the opportunity, while he had means to prosecute infringers, to assert his rights, if he had any, under those patents, when this writ was made?

The fact that these patents are not included in that suit affords evidence of the strongest character, also, that those suits were abandoned for the reasons suggested in the deposition of Mr. Dunn, and not for want of means. And this accounts for the omission to include them in the writ against Smith.

This is the only explanation compatible with Mr. Webster's well-known professional character.

On the 27th August, 1833, another suit was commenced in the Circuit Court, U. S. Mass. Dist., by Goulding, with other counsel, against Leland & Sabin, on these patents. The defendant prepared for trial. The suit was disposed of by the entry of neither party at the May term, 1835. Goulding abandoned the suit and gave the defendants a free license to use all his patents dated Oct. 10, 1834. (p. 103.)

Goulding says it was for want of means that he did not try that suit (p. 366, ans. int. 162); that "he was so poor that he gave the license to avoid going to jail on an execution for costs." (Ans. int. 163.)

Now, it will be observed Goulding was engaged more or less during the whole time, as he says, from 1827 to 1839, trying various experiments to improve machinery of different kinds, which cost him a "good deal of money for those days" (p. 469, ans. to cross-int. 1052–1053).

His operations with carpet machinery alone he admits cost him not less than twenty thousand dollars. (p. 470, ans. to int. 1062–1063.)

And it cannot be believed that he gave up so valuable a right to avoid the payment of a bill of costs which could not have amounted to fifty dollars, (as the case had been pending in court but two terms — it being

settled, as the license shows, five days before the commencement of the third term, and before any taxable costs of preparation had accrued.)

Why did he not appropriate some of the large sums he could control to try experiments with, and save this valuable invention?

The evidence does not sustain Goulding's reason for abandoning these several suits, — want of means. But it does sustain the theory proposed by us, and proves that Edward Winslow was the sole inventor of those combinations, and corroborates the testimony of Mr. Cooper.

But we have in the next steps taken by Goulding, further evidence confirming this.

The action against Leland & Sabin was the last suit brought on these patents. Mr. Goulding gave up all further attempts to hold under those claims, and surrendered all the patents for *combinations* in which the spool and drum entered as one of the elements, and in July, 1836, re-issued them in one patent and limited the claim to a combination and arrangement of the several carding machines and spinning machines for carrying into effect his improvement in the art of producing thread from wool by a continued operation, as set forth in the specification, or in the words of the claim. "I claim as new and as my own invention, in the improvement before specified, the combination of machinery to produce the thread from wool, or other fibrous material, by performing the operations of twisting, winding, or taking away the same, while it is being delivered from the cards; feeding the cards, and unwinding the sliver or roving for spinning, in the manner and modes particularly described in the foregoing specification. I do not claim the construction of the individual parts of the machinery used in the several processes before described, but the combination and arrangement by which they are made to produce thread from wool or other fibrous material, by a continued operation."

Thus disclaiming or surrendering and giving up the claims to the combinations of the spool and drum with the other machinery, he limited his claim to a patent for a single combination, the employment of these machines in a new "mode" process, or art of producing thread from wool by *a* continued operation, "performing the operations of twisting, winding, or taking away the same, while it is being delivered from the cards — feeding the cards and unwinding the sliver or roving for spinning, in the manner and modes particularly described."

If he did not intend to limit the claim, what possible motive could he

have had for surrendering and re-issuing the patents and taking a new patent with a disclaimer? The claim of the re-issued patent does not at least in its terms, embrace the individual combinations set forth in the claims of the surrendered patents, nor does it admit of that construction.

It is not a sufficient reason for re-issuing a patent, that a patentee prefers one to several patents for his inventions.

A patent can only be surrendered and re-issued, because of some mistake which rendered it invalid or inoperative. Certainly these surrendered patents were not invalid, because of a defective description of the invention, or because of defective specification of the claim, for in each the claims are clearly and distinctly expressed.

It will not be pretended that the re-issued patent was more effectual to secure to Goulding the combinations claimed in the former patents by reason of greater clearness and distinctness of description or specification. And it will hardly be attempted, we submit, to show that those patents were surrendered with that object; in view of the fact that this patent has been itself surrendered and re-issued with the claims of the old patent restored almost verbatim.

A patent can also be surrendered because of a mistake which rendered it invalid, such as claiming that which the patentee was not entitled to as inventor, and then upon a corrected specification of the claim a new patent may be issued, and thus the rights of the inventor protected to the extent of his merit. And it was to avail himself of this privilege that Goulding surrendered his patents, covering that which he knew he was not entitled to, — could not hold — and took out a patent for that which he felt assured Winslow had no right to claim. And if he or his assigns, the plaintiff, in this case had been content with that, the question of originality would not now be before this court.

It was urged on behalf of Mr. Goulding, in the Court below, that these patents of April 27, 1827, August 24, 1827, and February 16, 1829, were void, because "he could not cover by a subsequent patent a part of his first invention," and he surrendered them for that reason and took his re-issued patent for all "that belonged to him." Now there is not the slightest pretence for saying, that up to that time, any one had ever suggested that these patents were void for that reason; certainly there is no intimation that he failed to sustain the suits on them or either of them for that cause; we are dealing with his motive for surrendering them and the causes actual and potential which led to it, and we say he was

compelled to abandon all claims under them, and resort to a claim for "all that belonged to him," and that was the improvement in the art or method of mixing, carding, and spinning by a continuous operation, and not for the mechanical means by which his new or improved art could be practised.

If these patents were surrendered and the patent of 1826 re-issued, "to cover all that belonged to Mr. Goulding," embraced in the patents alleged to be void, (because improperly issued to cover parts of the same invention described in the first patent,) why did it not contain the claims as set out in those patents?

In the patent of Dec. 15, 1826, the claim is stated as follows:

"That part which I claim, etc., the method herein described and set forth in which the sliver etc., and whether consisting of one or more strands, is received or wound in any carding machine or bobbins by means of drums."

Where in the specification of this re-issued patent is this claim to be found?

In the patent of April 27, 1827, the claim is stated in these words. "That part which I claim etc., the method herein described and set forth in which the strands of wool in the second carding operation hereinbefore described, are fed to the card and conducted so as to cause the sliver, etc., to be even and of a uniform size when taken or delivered from the delivering cylinder or doffer card. The card to which the wool or other fibrous material, and where the same is thus fed and conducted is marked figure 2, in the drawings annexed, and the method of producing even sliver of a uniform size is hereinbefore described."

In the patent of Aug. 24, 1827, the claim is set forth in these words. "That part which I claim etc., the method hereinbefore described and set forth in which the sliver is unwound or delivered on a mule spinning machine or drawing frame, by the means of drums delivering it from bobbins, whether jaws are, or are not used in such mule spinning machine or drawing frame. In the foregoing specifications and drawings annexed drums of this description are marked *L*, and bobbins are marked *M*, in fig. 4."

In the patent of Feb. 16, 1829, the claim is thus stated.

"That part to which I claim, etc., is the method herein described and set forth in which the strands of wool etc., in the third carding operation herein before described, are fed to the card and conducted so as to cause the sliver etc., to be even, and of an uniform size when taken from the delivering cylinder."

Would it be possible to describe "the nature of the invention and the manner in which these several parts of it are to be performed" with greater clearness or distinctness than is set forth in these several specifications? It is difficult to see how they could have been better expressed, even if Mr. Goulding had had the assistance of some one as well versed in the patent laws and skilled in framing specifications as an experience of forty years has produced.

Now if Mr. Goulding's purpose in surrendering these patents was merely to re-issue his patent of 1826 upon an amended specification, which should embrace the invention claimed in each of them, why did he not claim these several inventions as he had before claimed them? And if there had been no more in them or either of them, than what belonged to him, why did he make a new claim, with a special disclaimer?

The amended claim (p. 512) is: "I claim as new and as my own invention, in the improvement before specified, the combination of machinery, to produce the thread from wool, or other fibrous material, by performing the operations of twisting, winding, or taking away the same, while it is being delivered from the cards; feeding the cards and unwinding the sliver or roping for spinning, in the manner and modes particularly described in the foregoing specification. I do not claim the construction of the individual parts of the machinery used in the several processes before described, but the combination and arrangement by which they are made to produce thread from wool, or other fibrous material, by a continued operation."

If we read the claim with the light of the circumstances which preceded and attended the re-issue of that patent, it is neither obscure nor ambiguous. It covers "all that belonged to him," "a general plan of operation, in which there are employed four distinct machines, each of these machines being so modified as to be capable of performing in that general plan the particular functions assigned to it."

Now, we do not intend to dispute that Mr. Goulding devised the plan of taking the wool from the doffer on the first breaker at the side in the form of a sliver, (although this may be doubted; he failed to sustain his claim even to this in the suit against Smith, for what reason does not appear, but it does appear by the deposition of Henry Goulding and Judge Merrick, that the reason he gave was not true,) but he ran it into a can or on the floor, and Edward Winslow devised the plan of winding it on a spool by means of the drum and its mechanism. (Cooper's dep. p. 90, ans. to int. 31.)

We do not intend to dispute that Goulding devised the plan of feeding the second breaker with roving or sliver from the first breaker, and thus the more effectually mixing the wool; but he fed it from the floor, and from cans; and Winslow devised the plan of feeding from spools on a kreel. (Same.)

Nor do we dispute that Mr. Goulding may have devised the plan of feeding the third carding machine or finisher, so that each strand of roving should be carried through the card and delivered separately from each other; but he delivered it on the floor, or in cans; and Mr. Winslow devised the means by which that could be done, and the strands could be wound on a spool. (Same.)

Mr. Goulding may have devised the plan of so preparing the sliver, that it could be spun on a mule; but he fed it from the floor, or from cans; and Winslow devised the means by which it could be spun from a spool. (Cooper's dep. p. 67, ans. to int. 5; p. 68, ans. to int. 6.)

And while we find that Goulding devised a plan of carding the wool, so as to affect the thorough mixing of the mass, rendering the whole homogeneous, and delivering it in fillets of wool of uniform size from the finisher, Winslow devised the mechanical means by which these operations could be practically performed. (Same.)

Mr. Goulding, therefore, gave up his patents for methods which embraced also the mechanical means, and limited his claim to the general plan, disclaiming those mechanical means.

And we think, if we examine that claim with the desire to ascertain its meaning, we shall find it express, that, and no more.

But if we seek to find in it something which is not there, "it may be exceedingly difficult to come at any *satisfactory* conclusion concerning it."

One may discover a new and useful art, or improvement in an art, and another may invent a machine by which this operation may be performed, and each may be entitled to his patent. — *Corning vs. Burden.* 15 How. 268.

Now all that Mr. Goulding did which had not been done before, was to devise a new method of mixing the wool, but Edward Winslow invented the machinery by which that method could be successfully practised; and the mistake Mr. Goulding made we say, was in taking out patents for Winslow's invention; and it was to correct that mistake that he was induced or compelled to surrender them, and take out his

patent of 1836 — for what he was lawfully entitled to — and as Edward Winslow's inventions had not been patented by *him*, there was nothing to prevent Goulding from employing them in carrying out into practice, his own invention, which was as he denominated it in that patent, an "improved mode of manufacturing wool and other fibrous material," and not for the machinery by which his improved mode or method of manipulating wool could be more successfully practised.

We think and respectfully submit, that these patents were not void, and that he had a legal right to take out separate patents for the several inventions therein claimed; and although he might have included them in one patent, he was not compelled to do so; and we do not think the language of this Court in the case of O'Riley & Morse, 15 How. p. 114, relied upon by the counsel, supports the doctrine that a patentee cannot have subsequent and separate patents for different inventions, although they may be all described in the specifications of one of them, unless they are *covered* by the claims of the previous patent.

These inventions admitted of being practised separately; that is, the method of feeding the carding machines was not employed in all cases where the inventions specified in the 2d, 3d, and 4th patents were used — and the inventions in the 3d and 4th patents were used for some years without those embraced in the 2d and 3d patents—and it is well known to the plaintiff's counsel, that carding and spinning wool is practised at this time, without employing the inventions described in the first and second claim of the present patent, corresponding to two of the patents of 1827.

It is immaterial however in the view we take of the motives which led Mr. Goulding to surrender these patents in 1836. It is manifest he did not surrender them because he was advised they were void, for the reason suggested.

Now, his subsequent conduct also shows that he so understood his re-issued patent, and that he procured it because he believed he had the right to put in requisition any machinery not patented by others which he might find useful in carrying into practice his new mode, process, or art — and that, having corrected the mistake he had made in obtaining patents for the machinery which he could not hold — by taking a patent for the new mode or process of working wool, which he could hold, even against Edward Winslow — he had removed the obstacle to his recovery against the manufacturers, and we accordingly find him, in one month after he procured his re-issued patent of July, 1836, viz., on the

29th of August of that year, commencing suits upon this new patent against several of the prominent woollen manufacturers in the State of Massachusetts (p. 206, Exhibit Q, R and S) aided by the most distinguished and able counsel — Rufus Choate, Richard Fletcher, Charles G. Loring and Horace Mann. (p. 447, cross-interrogatory and answer 871.)

Why did he immediately after receiving that patent commence three suits on it? The only explanation that can be given is that he felt assured that he had a patent which he could enforce — that it gave him a claim that could not be defeated by Edward Winslow.

It is not pretended that his pecuniary condition had improved, for, according to Goulding's account of his pecuniary means, there was no time from 1827 to 1843 and upwards, that he was able to prosecute suits against infringers.

The circumstances of the settlement of these last-mentioned suits afford additional and convincing proof that Winslow's claim to the invention of the application of spool and drum was well founded.

Soon after these suits were commenced on the re-issued patent, a meeting of the woollen manufacturers was called to consider Goulding's claim in the new form presented by this patent. At that meeting a committee was appointed to investigate the matter. Goulding having limited his patent to that part of the invention which Winslow did not claim to have made, no disposition was felt by any one to deny its validity, but inasmuch as Goulding had appropriated inventions made by Winslow, which were not only valuable but indispensable to the success of his process — the Committee, with Goulding's consent, were authorized "to report what consideration Mr. Winslow was entitled to, by reason thereof." The Committee, after due investigation, believing that Mr. Winslow's invention made the machinery practical, reported accordingly — "And that it was proper and just to pay Messrs. Goulding and Winslow for the invention."

In this report Goulding acquiesced. He never, as we say, suggested or intimated any objection. Mr. Lawrence was empowered by Goulding to

make collections of the manufacturers. Goulding signed the order for the payment of $2,100 to Edward Winslow, pursuant to the award of the Committee, (see p. 1141) and signed and settled the account with Mr. Lawrence. (See p. 1140.)

All which more fully appear, by the deposition of said Lawrence, on pp. 1133 to 1141. At the same time he signed and delivered to Winslow at least one promissory note for $500, payable in the event of obtaining a renewal of the patent. (See p. 487, Exhibit 29.)

Now, there is no serious denial of the truth of these statements. But Goulding, to evade the inevitable inference from them, says he did not willingly assent to anything done by him in the premises, that he was coerced into acquiescence — that his poverty was great, and the combination against him strong and formidable, and he was compelled to succumb. The degree of credit which can safely be given to Mr. Goulding's assertions will appear as we proceed, to be more and more limited, but a moment's reflection must show that no credit whatever should be given to this.

What had he to fear from combinations? He was supported by the ablest lawyers in the State, Rufus Choate, Richard Fletcher, Charles G. Loring, Horace Mann, were his counsel in these suits.

He had a patent which he believed could not be defeated. Nor did he fear this combination. The true solution is that Winslow's claim was so incontrovertibly meritorious that he was willing to adjust it on the terms proposed, and did so readily.

Again we have irrefragable proof that Mr. Goulding understood his re-issued patent of July 29, 1836, to be for a *combination* of the several machines employed and arranged to carry out his general plan and no more, in the printed licenses granting rights and privileges under that patent to the manufacturers, after the award of the Committee in 1837 before mentioned.

The license to the Middlesex Mills is marked Exhibit E² C. W. T. Examiner and is as follows (the words in italics are *written* in the original license):

"*Now know all men by these presents,* That I, John Goulding, of Boston, in the County of Suffolk, and Commonwealth of Massachusetts, Machinist, in consideration of *three hundred and forty* dollars — cents, paid me by *the Middlesex Company,* the receipt whereof is hereby acknowledged, do hereby license, authorize and permit the said *Company,* their heirs, executors, administrators and assigns to use *twenty-eight* sets of machines for carding and spinning wool or other fibrous material, containing *eight hundred seventy-eight tubes on eighty-two cards, and thirty-seven jacks or spinning machines, with forty-four hundred and forty spindles,* a description whereof is given by me in my specification thereof annexed to the Letters Patent issued to me for the combination thereof, bearing date the 29th day of July, A. D., 1836; for and during the term of the continuance of said Letters Patent or renewal thereof.

And I hereby release the said *Company* from all claims for damages for the use of said machines. In witness whereof I have hereunto set my hand this *thirtieth day of January,* A. D. 1837. Situated at *Lowell, County of Middlesex,* State of Massachusetts.

JOHN GOULDING.

Here we have his express declaration that he understood that patent to be for a *combination* of the several *machines* and he claims no more. Can there be any doubt as to his motive for surrendering his former patents and re-issuing the patent of 1826 for a *combination* of the machines?

But for the loss of evidence by accident, and the belief by Goulding that the "scythe of Time" had cut down the evidence by which the public could be protected, this claim would never have been expanded.

Relying upon the difficulties incident "to the investigation of old and stale matters, because of the infirmity of human memory, and of what is lost by time and death and accident," the parties interested in this patent surrendered that patent and attempt to cover, by the present reissue of it, those claims that were long ago abandoned because they were untenable, as we have fully shown.

That the present claims are identical with the claims of the patents surrendered, will appear upon comparison; also by the deposition of Thomas D. Stetson, p. 214 to 217.

We have also Goulding's admissions, both in conversation with Edward Winslow and with other persons, that Winslow did invent those improvements testified to by Cooper. The evidence of these admissions is contained in the depositions of

George L. Pierce, p. 63.
Edward A. Winslow, a son of Edward Winslow, pp. 49 and 50.
Joseph M. Fowler, p. 847.
R. G. Clifford, p. 714.

Mr. Pierce testifies that he heard a conversation between Goulding and Winslow, near the close of the year 1824, which he states as follows:

Int. 6. Whether or not you heard Mr. Goulding say anything to Mr. Winslow, about the invention of any and what improvement in the wool carding and spinning machinery, if so, when, and what did he say?

Ans. The exact time when, I cannot specify. I should think it was about the last of 1824. I worked at the end of the shop next to the

mill; that is the place where I heard what I am going to state. What called this out I cannot exactly tell you. Speaking of the surface drum or drum on spool, Mr. Goulding said to Mr. Winslow, that he had accomplished the object; that he ought to ride in a coach and six, for you have made both your fortune and mine, or mine and yours.

p. 65.

Cross-Int. 25. Did you hear all the conversation that took place between said Goulding and Winslow, at the time you have referred to?

Ans. I think I heard almost all of it: they stood near my bench.

Cross-Int. 26. Have you given the exact words that were used, or the substance of the conversation as you now recollect it?

Ans. I give the substance of it. The words coach and six were the exact words made use of, according to my best recollection. I am as positive of this as that I sit here.

Cross-Int. 27. What do you mean, that you are positive the words coach and six, were used?

Ans. Yes. I am positive that the words coach and six were used, and I am positive that the substance of what Mr. Goulding said, that he had accomplished what they were seeking. I suppose you understand what I mean to say, that Mr. Winslow had applied the drum, that it belonged to him. I mean to say that Mr. Goulding said that.

Cross-Int. 28. Can you swear that either the words "applied" or "belonged to him" were used?

Ans. I could not swear that those were the words that were used, but that was the idea that was communicated.

Edward A. Winslow testifies that he heard conversations between Goulding and his father on three occasions, which he states as follows, p. 49.

Int. 8. Whether, or not, you ever heard any conversation between John Goulding and your father in relation to any, and what invention? If yea, state when and where, and what was said, or the substance of what was said, as nearly as you can.

Ans. I heard conversation between John Goulding and my father in Lowell, at my father's house in Church Street, about the year 1834, as near as I can recollect. John Goulding wanted to have my father take

hold with him, unite with him to get the patent extended. He said it was a pity to have the manufacturers get it without paying for it; at the same time he told my father that he might be a rich man if he would take hold with him and help him get the patent extended. Furthermore, I recollect he told him he could do nothing without him. This was the substance of the conversation at that time; he was there several times.

Int. 9. Whether or not you heard a conversation between them at any time afterwards; if so, when and where, and what was said?

Ans. I think I did, twice; I recollect one time in particular; I could not state, it was in 1840, or 1848, Mr. Goulding was there about those dates; at one time they had a conversation in a small counting-room next the machine shop, this was my father's counting-room, the conversation in substance was the same as it was the first time Mr. Goulding came to Lowell. There was one time he was there, he wanted my father to release all claims; he offered to give him something pretty handsome, but I cannot recollect what he agreed to give him, whether he offered any particular sum, or not, he told him the same as he had previously done when he was there the first time; he might be worth a fortune as to work, for the Middlesex Company, at the same time, I recollect, that he made a motion towards the shop, the door being open, he raised his hand and said he might be worth a fortune as well as to work here for the Middlesex Company.

Int. 10. Was there anything said about any, and what invention? If so, what was said? State as nearly as you can the substance.

Ans. The conversation was with regard to the condensing card. I do not know that I can recollect particularly what. I think I have answered that question on the other side.

Int. 11. State whether or not, your father said anything as to the inventor of any part of the carding machine, or invention mentioned in the patent, If so, what did he say, and what did Mr. Goulding say, if anything?

Ans. I recollect, I do not know whether it was at the machine shop or house that they had some pretty warm conversation. Mr. Goulding accused my father with being under the influence of Samuel Lawrence. I heard my father tell Mr. Goulding that he had introduced all that was original to perfect the Lowder and Whiting machine; that was, he had reference to the surface drum, my father always did, at that time, claim that as all that was introduced at that time to perfect the condenser.

Well, I do not recollect that Mr. Goulding denied it or made any objection to it."

He also testifies that John Goulding told him previous to the last reissue of the patent in presence of others, that he always acknowledged that his father introduced the surface drum — which he states as follows — p. 50 — int. 17.

"*Int.* 17. Did he, Mr. Goulding, say any thing? If yea, what about any and what invention of your father's.

[*Objected to.*]

"*Ans.* He spoke about my father's introducing the surface drum, on the way to Lowell, or while we were going to Lowell. On the way to Lowell, he told me that he always acknowledged that my father introduced the surface drum. After I met my brother, in the presence of Mr. Goulding, I remarked to my brother that Mr. Goulding acknowledged that my father introduced the surface drum. Mr. Goulding spoke and said, certainly, I always acknowledged that. I spoke to my brother, there were several other persons present, to recollect what Mr. Goulding said then. Mr. Goulding said that my father took it from the Taunton speeder. My brother spoke then, and said that did not make any difference, for Howe applied the needle, with a hole in the point of it which had been used among the ancients eighteen hundred years ago. I think this was all."

Joseph M. Fowler, (p. 847,) corroborates this, he says, as follows:

Int. 6. Were you present at Richardson's restaurant in Lowell, at any time when a conversation took place between Edward A. Winslow and his brother and Mr. John Goulding; if yea, state when it was?

[*Objected to.*]

Ans. Yes, sir, I was. I should think it was in the Spring of last year, the Spring of 1864.

Int. 7. Do you remember anything that was said by said Goulding in that conversation, if yea, state what it was.

[*Objected to.*]

Ans. Yes, I do. Mr. Winslow came for his brother and wished him and me to go up to Mr. Richardson's and see Mr. Goulding. When we went into the saloon Mr. Winslow introduced Mr. Goulding to his brother George and myself, and made the remark to George that Mr. Goulding said to him that he never had pretended to deny, I think these were his words, that his father was not the inventor of the surface drum, or did not make the application to the machines, or something to

that effect, I have forgotten the exact words. Mr. Goulding then said certainly not or surely not, but that his father took it from the Taunton speeder, or speeders. George Winslow then said that did not make any difference, and he cited as proof the Howe sewing machine needle, and then there was — and then Mr. Goulding and the Winslow boys argued at some length that whether the application of the surface drum to the machines would procure him a patent. I can't attempt to state all the conversation in regard to it. During the conversation George told Mr. Goulding that he, Mr. Goulding, knew the invention was his father's. In reply to that, Mr. Goulding remarked, that the parties introducing an invention to the public, were the parties to whom should accrue the benefits, and if they could prove their father introduced this invention to the public, then his father was entitled to the benefits therefrom. I can't say that those are the precise words, but those were the substance and the sense of the conversation.

R. G. Clifford, (p. 715,) also corroborates this evidence, he says as follows:

Int. 2. Were you present at a conversation between Edward A. Winslow and his brother, and John Goulding, at any time, and when which took place at a restaurant in said Lowell?

Ans. I was, sir. It was a year ago, last winter; I could not tell what month.

Int. 3. Please state what you heard said by said Goulding, then and there?

Ans. I heard Mr. Goulding say, told Mr. Winslow and brother — Mr. Fowler was present also — that he did not deny but what their father got up the surface roll; but he thought that the man that introduced it to the public was entitled to the patent. That is as far as I can swear to anything, I did not hear anything else.

Int. 4. Where did the conversation take place — what place?

[*Objected to.*]

Ans. At Richardson's oyster saloon or house, at 21 Merrimac Street.

This conversation took place in the Spring of 1864, about ten days after the trial of the action *vs.* Lombard & Bickford, and while he was claiming under the patent of July, 1836, which was for an improvement consisting of a combination and arrangement of the machines and not for any improvement in the construction of the several machines — such an admission therefore, he considered he might well make without affect-

ing his interest under the patent he then held. He had surrendered his old patents which covered this very invention of Winslow — and took out his re-issue of 1836 for the combination and arrangement of the machines instead, for the very purpose of avoiding all collision with Winslow — but afterwards and when it was found advisable to make this patent a drag-net to gather in all machinery used in carding and spinning wool — he comes forward and denies that he ever made such admission. Enough, however, is disclosed by the cross-examination to make it morally certain that the conversation did take place as related by these witnesses.

He denies, also, that he ever had either of the conversations with Edward Winslow, related by Edward A. Winslow. He admits, however, that he did call upon Edward Winslow on one occasion, at the Middlesex Mills in Lowell (p. 359) in 1848, "to get him to *sign a petition to go before the Committee of Patents at Washington* in the case of my application for the renewal of my patent for improvements in woollen machinery," — and he produced the petition or paper marked Exhibit 27, p. 485, bearing but one signature, and that of Edward Winslow, which is in these words.

"*To all persons whom it may concern:*

The undersigned, persons engaged in the manufacture of woollens and the fabrication of machinery for woollen manufacture, and other persons state and certify that we are well acquainted with the invention of Mr. John Goulding, patented by letters patent December 15th, 1826, "for his improvement in the manufacture of woollens."

We cheerfully testify to the high importance and great value of the said invention. It is within their knowledge that the said Goulding, in the perfecting of his said invention and bringing it into public use, encountered very many obstacles and embarrassments, and sustained very heavy losses, and devoted many years to its completion.

Having understood that Mr. Goulding has applied or is about to apply to Congress for a renewal or extension of his said letters patent, they do not hesitate to say that in their opinion justice requires that such renewal or extension should be granted, provided that exception be made in favor of machines now in use. The public, through his skill and exertions, has been greatly benefited, said machine possessing immense value to manufacturers, and the inventor has hitherto failed to receive, as we believe, anything like adequate remuneration.

March, 1848.

Names.	Residence and occupation or business.
EDWARD WINSLOW.	LOWELL WOOLLEN MANUFACTORY."

The existence of this extraordinary document was until that time, unknown, except to Goulding and the parties in interest with him, and this fact, in view of the nature of the paper and Winslow's relation to the

subject of this patent, affords the highest proof confirmatory of the testimony of Edward A. Winslow in reference to the interview with Goulding and his father. Such a conversation as that related by Winslow would naturally precede the signing of that paper.

Goulding does not state *what* he said to Winslow to induce him to sign that paper, and if left to conjecture alone, any one acquainted with the previous history of these two men in reference to this invention would suppose it to be just what Winslow says it was.

What reason could Goulding give to one of the operatives in a woollen manufactory, who to use his own language in speaking of this same operative, was an "obscure mechanic," "a second-rate blacksmith," whose only recommendation being that "he could forge a piece of iron pretty well, and might be tolerable useful in some other things" (p. 352) for calling upon him to head a petition designed to influence the legislative action of the Congress of the United States upon a matter affecting the interests of so large and important a class as the woollen manufacturers of the country.

Goulding's purpose in calling upon Winslow at that time is obvious, and cannot be concealed by the subterfuge resorted to. It was to commit Winslow to the extension, and he doubtless promised him a consideration for it, which we think will clearly appear as we proceed.

This paper was prepared in Washington by Goulding's counsel. Then Goulding went direct to Lowell, obtained this signature, returned immediately to Washington, and there presented his petition for extension of his patent March 21, 1848. This paper signed by Winslow was never used, but has remained in his possession until this emergency brought it out, (p. 437, cross-ints. 801, 2–4,) when he "gave it up to Mr. Jordan with other patent papers." (Cross-int. 805, etc.) Thus showing that he held and dealt with it as a muniment of title, a kind of release or quitclaim from Winslow, by which he was to secure exemption from any further trouble on account of his invention.

That Winslow was to receive a consideration, there can be no reasonable doubt. His claim as the inventor of that which made the patent valuable was asserted and not denied at one or more of these interviews, and it is a reasonable inference from the facts already proved, that Winslow received a consideration for signing that paper, and that consideration we shall show was a written contract and promissory notes signed by Goulding to a large amount.

These papers were unfortunately destroyed some years before under

the circumstances stated by Edward A. Winslow in his second deposition, p. 838–9, int. 7 and 8, and cross-ints. He says he had seen notes given by John Goulding to his father. They were about $20,000. He had heard his father say many times he held John Goulding's notes for improvements he had made in woollen machinery. These notes, with other papers, were destroyed as he states on the cross-examination. In answer to cross-int. 24, he says he "was present when they were destroyed. My father had partly lost his eyesight, and set my brother and myself looking over papers to see what there was of any value. These notes at that time were considered worthless by my father. For that reason they were put away with other papers and destroyed." This was sometime before the death of his father. He died in 1861.

Goulding was not aware of the destruction of these papers as stated by the witness until about the time this deposition was taken, and his efforts to obtain possession of "all the old papers" shows that the Winslow family were supposed by him to be possessed of papers of vital importance to his and the plaintiff's interests.

It has been shown that one note of five hundred dollars was given to Winslow in January, 1837, payable on the event the patent should be extended. This had been preserved, how it came to escape destruction does not appear. When Goulding paid it, he expressly stipulated that he should have "all the old papers."

E. A. Winslow says, (p. 50, int. 13, and ans.) he called on me last spring, eight or ten days after his trial with Lombard, (January, 1864,) and wanted me to give up all the papers I had in my possession relating to his patent. And on p. 51, int. 19 and ans. "he said the understanding was when he paid the $500 note, he should have all the old papers."

Now Goulding admits, that on the occasion referred to by Winslow, he did go from Worcester to Dracut expressly to see Winslow about papers, "about some papers," denying, however, at the same time that he thought he had any papers. The evasion and contradictory character of his answers under the cross-examination, is the best refutation of his denial, and shows conclusively his belief at that time in the existence of these papers, and no comment can make this clearer than the answers themselves, (pp. 428–432.)

Cross-Int. 735. Did you not go up to his place of business at Dracut to see him?

Ans. I did.

Cross-Int. From where did you go to see him?

Ans. From Worcester.

Cross-Int. Did you have any conversation with him upon the subject of the business that led you to go to Dracut?

Ans. Nothing farther than the business itself.

Cross-Int. Did you have any conversation with him either at Dracut or on the way to Lowell about the business you went to Dracut on?

Ans. There was some talk about it.

Cross-Int. What business did you have with Edward A. Winslow at the time you went to Dracut to see him?

Ans. Some short time before I went to Dracut, I had some business with Edward A. Winslow; in settling that business with him, I told him that I had heard, that he had said, that he had papers in regard to his father's business with me, and it was expressly understood between him and me, at the United States Hotel, in Boston, if I paid a certain note that he brought forward, presented to me, that all the papers, if any there was, — he was not certain there were any — but be as it might, more or less, I should have them by paying that note; that note he presented; that he would send those papers, whatever they might be, to me in Worcester, on his return home to Dracut, I think he called his home. I heard nothing from him for some two or three weeks; I went up to see him, on purpose, to get those papers, if there were any; he told me, when I saw him in Dracut, that his mother had them, if there was any, and he would go over with me and get them, if there was any; after going over, he says to me, stop in this saloon while I go and see my mother; he came back and says he could get no papers; and after stopping a little while in this saloon, we went out together as far as the depot, and he says to me, there are no papers of any consequence whatever; what conversation I had with him, I meant to have it strictly confined to the business that I went to see him about, that is, about certain papers that had been represented that he had.

TUESDAY, May 23, 1865.

Witness wishes to add to his last answer. What drew out the last answer he made me in regard to there being no papers, I spoke to him about the contract that was made in Boston, and he replied as above. I never supposed he had any papers.

Cross-Int. 740. What was the nature or character of the papers you went there expecting to get?

Ans. Well, I never knew; it was by hearsay; not from him or any one directly concerned that there was any, and he did not affirm that there was any at the time this bargain was made; but he said, if I paid that money, whatever papers there were, if any, he would send them to me at Worcester on his return home.

Cross-Int. 741. Do you mean to say, that you went to Dracut to see Edward A. Winslow at that time without any expectation whatever of getting papers from him?

Ans. I mean to say that on this settlement of all controversy, as I understood it at the time, and as he so represented it, everything between me and his father's estate was to be cancelled; and as he did not represent that there was any papers, but yet if there was I was to have them, under those circumstances I went to see him, and that only for that purpose; only to get the papers if there was any. I can't say, and don't say, that I thought I should get any papers, for my mind was against the idea that he had any; but under all circumstances I thought best to go and see him.

Cross-Int. 742. What did you understand the character of the papers to be, if he had any?

Ans. There was no character spoken of in regard to the papers, neither that they were notes, bonds, agreements, or anything of the kind; only if there were papers of any description, whatever name or nature, they were to be given up to me, for the aforesaid sum paid to him.

Cross-Int. 743. What did you understand the description of the papers to be, if he had any that were to be given up?

Ans. I had no idea what they could be, for I did not believe or think, that he had any more papers than the one he presented me; if he had any more, if I thought anything about it, I should have thought he would have presented them to me with the one he did present.

Cross-Int. 744. How far is Dracut from Worcester?

Ans. Forty-four miles, perhaps.

Cross-Int. 745. Why did you go from Dracut to Worcester to get the papers from Winslow?

Ans. I did not go from Worcester to Dracut to get the papers from Winslow; I went to see or learn if he had any; and I did find out from his own mouth, that he had none, and said there was none of any account any way.

Cross-Int. 746. What papers did you suppose he referred to, at

either time when he spoke about papers in his possession which he promised or agreed to deliver up to you, in settlement of the controversy between you and the estate of his father?

Ans. In the first place he never spoke of any papers whatever, excepting the one he presented me. The whole affair in regard to papers was on account of my saying to him that I heard he had some papers; but he never told me at that time; did not tell me at that time, nor no other time; but if there were any papers, his mother had them, and he would get them and send them to me. There was no particular papers of any kind or description named; but if there was any of any sort, they were to be given up.

Cross-Int. 747. You say you went from Worcester to Dracut to see or learn if he had any papers. What description of papers do you refer to?

Ans. I did not go from Worcester to Dracut to see or learn if he had any papers. I went there in consequence of his not fulfilling a previous agreement made with me in some way.

Cross-Int. 748. You have answered the seven hundred and forty-fifth cross-interrogatory in these words: "I went to see or learn if he had any." What did you mean by that?

Ans. I mean in all those questions that amount to the same thing, that I never believed he had any papers; neither did he ever tell me he had any. My answer should have been, that I did not acknowledge of knowing or thinking that there was any papers to go for; I went for the purpose of his fulfilling his previous contract.

Cross-Int. 749. What do you mean by "fulfilling his previous contract?"

Ans. I mean this. I think he did fulfil his contract when I went there; he never promised me that he would give me any papers whatever; by his saying to me that there were no papers of any consequence (he) fulfilled the contract with me to my satisfaction.

Cross-Int. 750. What papers do you suppose he referred to?

Ans. I never knew that he referred to any, he never said to me he did; but if there was any I should have them.

Cross-Int. 751. Please describe the papers as fully as you can, which are referred to by you in your answer to the seven hundred and thirty-ninth cross-interrogatory, and state what papers you supposed them to be?

Ans. I want to be informed a little whether it embraces the note taken up, as well as the other papers, if any there were?

Cross-Int. 752. It refers to the other papers if any there were.

Ans. I never supposed there was any, but if there was any, they were to be given up, on payment of a certain paper he produced to me.

Cross-Int. 753. In answer to the seven hundred and thirty-ninth cross-interrogatory you used these words: "I told him that I had heard that he had said that he had papers in regard to his father's business with me." What did you suppose those papers to be?

Ans. I could not have any idea, for I did not suppose he had any; the whole affair began on supposition and ended about the same, excepting the note which he presented which he got the money for; that was all in my opinion at the time, the papers that he had, that had been heretofore spoken of or alluded to, therefore I supposed, as it turned out to be, that I got all the papers that I had heard that he had had. The note was all the paper I supposed that he had or that I had reference to in saying to him that I understood he had some papers between me and his father, and when that was taken up I supposed I had got all; but yet he said if there was any more, I should have them, for it was understood between us that paying that note was a settlement of the whole matter between me and his father's estate.

Cross-Int. 754. Then when you went to Dracut, you went to see if he had any more papers relating to transactions between his father and yourself, did you not?

Ans. I went to Dracut for the express purpose of his fulfilling the previous verbal contract with me; and I considered that he did fulfil it, by saying that there was no papers of any account.

Cross-Int. 755. Will you be kind enough to answer the preceding interrogatory?

Ans. I don't know how I can answer it any better. I don't acknowledge of knowing or believing that he had any papers; therefore if I have said that I went there (witness here desires to hear the previous cross-interrogatory read which alludes to an answer which I gave, as to what I went to Dracut for, that is the seven hundred and forty-fifth interrogatory, question and answer I want read, and upon their being read witness continues), I can't answer it any better than is answered to the seven hundred and forty-fifth cross-interrogatory.

Cross-Int. 756. Then you did go to see if he had any more papers relating to the transactions between yourself and his father, except the note that was given up, did you not?

Ans. I went for the express purpose of his fulfilling his previous

contract, whether it related to papers supposed to be, or anything else.

Cross-Int. 757. Is that the only answer you are willing to give to that interrogatory?

Ans. I don't know how I can interpret it any better.

Cross-Int. 758. Where is the note referred to in the preceding answers?

Ans. I don't know.

Why should he travel from Worcester to Dracut in mid-winter to see why Winslow hadn't kept his contract with him, if he knew he never had what he had contracted to give up?

Goulding undoubtedly had in memory and in view these $20,000 notes when he stipulated for the surrender "of all the old papers relating to the patent." As shown by his answers to the cross-interrogatories (pp. 440, 441, 442,) as follows,—"you did not know that the demand was upon notes, which were alleged to be lost notes, until you got the declaration from the sheriff, did you."

Ans. I don't know for a fact; I might have heard that they set up some pretence, although this Edward A. Winslow, at the time of my paying him five hundred dollars for the settlement of all demands between me and the Winslow estate — his father's — he made no mention, nor intimated in any shape whatever, that there were any other notes, or ever had been, that were given by me to his father; and I said to him, if I pay this note it will settle all claims, will it, that the heirs of the Winslow estate have against me? and I further said if there were any papers, which he said he did not know as there was, but if there was any when he got home he would send them to me at Worcester; and on those terms, and those alone, that is to cancel all claims whatever, I paid him five hundred dollars and took the only note or paper that he said there was against me. I paid him five hundred dollars, all claims or supposed claims.

Cross-Int. 828. Did you take from Edward A. Winslow, when you settled the claims, or supposed claims, any receipt or memorandum in writing of the settlement?

Ans. I did not; for the simple reason was I did not think for a moment there was any other claim, and don't now think there was; therefore if I got the note I supposed it was all-sufficient for me.

Cross-Int. 829. Why did you say to him, "if I pay this note it will settle all claims, will it"?

Ans. That seems a little oversight in my answer; I did not mean that there ever were claims any further than the note presented.

Cross-Int. 830. Why did you say to him anything about the payment of the note settling all claims "that the heirs of the Winslow estate have against me"?

Ans. I had heard, from outside sources, that they did pretend there were some claims; therefore to make the matter sure, I wanted it, at that time, particularly understood that the five hundred dollars were in settlement of any pretended claims there might be, and he agreed to send me, if there were any papers, whatever they might be, to send them to Worcester on his return home.

Cross-Int. 831. Were those the papers you went to Dracut to see about?

Ans. I did not go to Dracut thinking there was any papers; I went there because I thought he had not fulfilled his contract with me in Boston; I went to see what it meant, and the result was, he said there was no papers of any account.

Cross-Int. 832. In what respect did you think he had not fulfilled his contract before you went to Dracut?

Ans. Inasmuch as I had not received any letter from him explaining why he had not done so.

Cross-Int. 833. Had not done what?

Wrote me as he agreed; he said he would write me at Worcester and he had not done so.

Cross-Int. 834. What was he to write about?

Ans. The least he could have done, in a business like, would have been, to write me that I need not expect any papers, for there was not any; if that had been done I should not have gone to Dracut to see him.

Cross-Int. 835. You did feel some interest in knowing the fact, that there no papers of any consequence in his possession did you not?

Ans. I knew that fact before I went there, for he had told me in Boston, at the time of this settlement spoken of, that was all the paper he had.

Cross-Int. 836. Then why did you go to Dracut?

Ans. To see why he had not fulfilled his contract in some way — his verbal contract?

Cross-Int. 837. What do you mean by the words, "in some way —" what do you refer to?

Ans. I refer one way, would be to send me a letter with the papers, if there was any, another way would be, in a business way to send me a letter saying there was no papers.

Cross-Int. 838. Then you did feel interest enough to learn whether there were any papers in possession of any member of Edward Winslow's family, to go to Dracut to see about it, did you not?

Ans. I went to Dracut, in consequence of conversation had with Edward A. Winslow in Boston.

Cross-Int. 839. Is that the only answer you are willing to give to that question?

Ans. I don't see but that it is the only answer I can give.

Cross-Int. 840. Did you not feel interest enough to learn whether there were any papers in possession of any member of Edward Winslow's family to take the trouble to go to Dracut to see about it?

Ans. I went to Dracut to see Edward A. Winslow and no other, that is my business was entirely with him; I wanted to see no other, and had no desire to see any other; the business was solely to see why he had not fulfilled his engagements with me, at Boston.

Cross-Int. 841. Will you hear the preceding question read and say, whether or not you have any other answer to make to it?

Ans. I don't think I did on that score; my business was entirely with him; I wanted to see no other person about papers whatever.

Cross-Int. 842. Did you tell Jordan, Marsh & Co. or either of them, or any one acting on their behalf, what Edward A. Winslow said to you about giving up other papers, if there were any?

Ans. I did.

Can more convincing proof be given, than this examination affords; that he was anxious about papers which he believed this family held, affecting his interests; and that those papers related to this patent?

His answers to cross-interrogatories relating to notes and contracts with Edward Winslow, imply doubt and uncertainty. The very nature of the subject, would preclude all necessity for reflection in answering. If he had never given such notes, he would have spoken promptly and decidedly. And if he had not been conscious that he had given them, and apprehensive that they might possibly be still in existence, he would have answered every question without hesitation.

When asked, (cross-int. 856,) did you not give Edward Winslow at some time your notes to the amount of several thousand dollars? He answered, I don't *think* I did.

Cross-Int. 857. You are not willing to swear positively that you did not, are you?

Ans. I am willing to swear to the best of my belief. I did not.

Cross-Int. 858. Are you willing to answer the preceding question more positively?

Ans. I don't know that the question requires it.

When asked if that is his only answer to that question, he proceeds to say according to the best of his belief the note of five hundred dollars, was all he ever gave, etc.

In July 1864, a suit was commenced against Goulding, by the administrators of Edward Winslow, and his conduct occasioned by that suit can be explained on no other theory than his belief in the existence of these notes.

As soon as he heard that the suit had been commenced, he forthwith put his personal property out of his possession to prevent attachment.

This fact appears not only from a conversation he had with Cooper as stated by the latter, but from his own admissions before Cooper's testimony was taken, upon this subject. (p. 869, int. 30 to Cooper, and ans.)

Int. 30. Was there anything said by him to you on either of those days about the Winslow heirs? If yea, what did he say.

[*Objected to.*]

Ans. He said that he had sold out for a hundred thousand dollars and got it all in his pocket, where the Winslow gang could not get it except his house, that they had attached.

Int. 31. Did he say anything about putting his property out of his hands? If yea, what did he say upon that subject.

[*Objected to.*]

Ans. He said when they attached his house, he had ten thousand dollars worth of wool in Boston; he went quick and put that out of his hands, his United States Bonds he put into another man's hands, as his own property, then he was afraid he would turn rascal, and he took them away from there, put them into the Bank, they were there awhile, then he took them from the Bank, and put them into his own safe, and they are there now, as he said.

Int. 32. Was anything said about concealing them?

[*Objected to.*]

Ans. He asked me what I thought he could do with them to have them safe.

Goulding admits in his cross-examination so much of the essential parts of this statement as to leave no doubt of the substantial correctness of the whole of it.

His examination upon this matter is contained in pp. 433 to 440 of the record, while he denies in terms having *told* any one that he had put his property out of his hands because of this suit — he admits the several acts in detail of the transfer, assignment and disposal of his property, and when asked if he made these transfers before he received the declaration from the sheriff, he answers: "I never dreamed of doing such a thing until after this fraudulent suit was commenced." (p. 440, ans. to cross-int. 825.)

When he received the declaration from the sheriff, which was sometime after the service of the writ, he was greatly relieved to find that the suit was brought on lost notes. "That the claim seemed to be on supposition wholly." And he then bought it back again. (p. 433, int. 767.) "Did you not soon after you heard of that attachment change the custody of some of your personal property?"

Ans. "I did. I have since taken it back again. I sold it *bona fide*, and I bought it back *bona fide*, and it now stands for any one to attach who sees fit — all my property stands in that way."

The reason is obvious. The notes being lost, the Winslows were without evidence as he thought, to support their case — and there was no longer need of concealment of his property. No further refutation of his so-called "reasons for so doing" given in his answer to the 822d cross-int. (p. 439), will be required, that statement is inconsistent with facts and false upon its face.

Another circumstance showing apprehension in relation to these notes is the fact that he put the title of the extended patent in his son's name. He substantially admitted this to Cooper. The transactions in Mr. Mason's office, testified to by Cooper, and admitted by Goulding to be as substantially stated by him, shows that he dare not keep the title in his own name. He sold it as soon as he found he was compelled to take it from his son.

Cooper's dep. p. 869, ans. to int. 33.
Goulding's dep. p. 438, ans. to cross-int. 817.

Although he denies that he ever said that he dare not keep the patent in his own name, he admits enough to show that Cooper's statement is correct, and the "reasons" he gives for vesting the title in his son have not even the merit of plausibility. *Ans.* Cross-int. 815.

We think we may justly assume that it is proved to a moral certainty

that Winslow held Goulding's notes to a large amount which Goulding considered "papers relating to the patent," — and that no further argument is necessary to show that Cooper is thereby corroborated.

If the paper signed by Edward Winslow has any bearing on the case it is only as a declaration which the plaintiff may argue to be an admission in favor of Goulding's right to the patent. While we deny that it warrants that inference we insist that if it be admitted as evidence, the defendant may put in other declarations of said Winslow to the contrary — and subject to objection, we offer the writing marked Exhibit F, p. 838, as follows:

DEDHAM, May 20, 1828.

"To-day John Goulding admitted in the presence of Geo. Pierce, that I was the inventor and made the first application of the surface drum to unwind the sliver from the spool. "E. WINSLOW."

Mr. Pierce testifies, (p. 834,) that he was present when that paper was written and signed, that he saw Mr. Winslow write and sign it, and that he heard the conversation therein referred to. Ans. to ints. 4, 5, 6, 7.

Now while Winslow claimed to have applied the spool and drum to *wind* up the roving on woollen cards as well as unwind the roving — he did not consider the "winding up as a new process because it had been applied on cotton, but the surface drum for unwinding could not be dispensed with and he made that application himself, and considered that the only important, the most important part of the application of the surface drum to woollen manufacture." (Pierce's dep. p. 833; ans. int. 3)

And this was the view Goulding took of the invention. That was what he meant when he referred to the Taunton speeder and Danforth.

And in answer to cross-int. 576, p. 415, he says he made no experiment on the carding machine with spool and drum "for the reason that winding up with spool and drum was perfectly familiar with him and had been for many years in winding cotton roving, he had no doubts on the winding it."

Taking this view of it, the admission was full and complete that Winslow had invented all that made the improvement valuable.

The admission does not exclude the idea that Winslow did apply the spool and drum to the carding machine first; but is perfectly consistent with it, and while it is true that Winslow did so apply the spool and surface drum to the carding machine, Goulding refused to recognize

it as an invention, because they had been used on cotton machinery before.

We have the express declaration of Winslow, that he was the first to apply the spool and drum to the carding machine, not only to Mr. Pierce, as stated (on page 833, ans. int. 3,) but in a letter to his son Edward A. Winslow, marked Exhibit G, p. 838, in which these words occur, "You ask me what part of the carding machine was invented when I worked for Goulding in Dedham. I claim the surface drum, and think that is the only thing there is about it that was original. — E. WINSLOW."

Edward A. Winslow, testifies, p. 838, that that paper is in the handwriting of his father, and that he had also heard him say many times that he introduced the surface roll to the cards and jacks.

And these declarations both oral and written are competent evidence to prove the fact recited, if the paper put in by plaintiff, before referred to, is competent to show the contrary.

We now pass to the consideration of the evidence offered by the plaintiff to support this patent. And it consists of allegations and denials by John Goulding, unsupported by a single corroborative fact or witness. In testifying, he proves himself to be disingenuous and untruthful.

He commences his narrative, which purports to be a history of his invention by a statement of facts so artfully made as to successfully imply a falsehood until exposed by the cross-examination, and we beg to call attention to his testimony in this regard. We begin with his operations in Halifax, Mass., where he started his business about the year 1820, previous to which time, although engaged in building wool machinery, nothing occurred relative to this invention of improvements which led to the introduction of the "perpetual roll," p. 342. He was requested by plaintiff's counsel, (int. 13,) to "state as fully as you can what you did at Halifax in woollen machinery, either inventing or experimenting."

Ans. Then I had another object in view in experimenting than what I had before. That was, to get rid of the billy entirely and short rolls. My experiments on that were numerous, even while I was at Halifax. *Before I had left Halifax I had superseded the billy in a great measure.*

In his next answer he describes those experiments. In this statement

he intends to convey the impression that he conceived the idea of dispensing with short rolls and the billy by carding the wool into a perpetual sliver or roving — and that he produced as his own invention the machinery he used, to effect this, in his experiments at Halifax from 1820 to 1823.

This is not true; the machinery used then was invented and constructed by Lowder & Whiting; and although it may be true that Goulding used it in the way stated, he was practising not only upon the principle first discovered and applied by another, but on a machine invented and constructed by such other.

His own admission, extracted from him on cross-examination, proves that he was operating in Halifax with the Lowder machine.

The condenser, which was one of the novelties of the carding machine to produce the long roll, was called the Lowder "boot legs." (p. 410, ans. to cross int. 517.)

And in answer to cross-int. 518, he describes this condenser — as he had described it before in giving an account of *his* operations — and admitted that "that was considered the Lowder condenser"; and says, "I tried it merely to see what effect it would have on the wool or the roving."

The Lowder Condenser or Carding Machine for making the long roll, was invented by Lowder & Whiting, in Dedham, near Halifax, as early as 1818, as testified to by Samuel G. Whiting, p. 863, which he describes in ans. to int. 9, as follows:

"This was the common carding machine with a doffer attached, for the purpose of making perpetual rolls. The doffer was covered with strips of filleting put on in a zig-zag form for the purpose of sweeping the wool from the main cylinder. I do not know the mechanical terms, and I may not describe it as it should be. This carried it into what was termed a "condenser." That condenser rotated and vibrated at the same time. That brought the wool through in these perpetual rolls, condensed and rolled.

And in answer to int. 11, p. 864, he says: "there was one doffer which had a straight ribbon roundit of filleting of strips of card; this doffer vibrated." "At one time they had two doffers."

This witness also says: he used to see John Goulding at his father's mill from time to time. Now, upon comparing this description of this Lowder machine with what Goulding describes as his experiments, more especially his answer to int. 26, p. 345, where he says — I used a single

doffer, *the fore part* of the time in my experiments — this doffer was covered with rings that had a *zig-zag* or serpentine shape round the doffer, etc. And in answer to cross-int 133, p. 377, the next in order "as nigh as I can recollect was the vibrating doffer."

The identity of the Lowder machine at Halifax is completely made out.

Again we have the positive testimony of Isaac C. Bosworth, (p. 860) and Daniel Bonney, (p. 859), that Goulding had in the mill at Halifax and operated a carding machine for making the long roll known as and called the *Lowder* machine.

Again, he has not only attempted to mislead as to his doings at Halifax, by a perversion of the truth — but he has attempted to deceive by asserting that which was untrue.

He said distinctly and positively, in answer to the thirteenth direct interrogatory, p. 342: "Before I left Halifax, I had superseded the billy in a great measure." The cross-examination shows this to be impossible in view of what was described as done in Halifax, and what was done afterwards in Dedham; but the crowning proof of the untruthfulness of this assertion is drawn from Goulding's own mouth. He was asked by cross-interrogatory, 248, p. 386: "In your answer to direct interrogatory 13, you used these words: "Before I left Halifax I had superseded the billy in a great measure." State how or by what means, you accomplished that?

Ans. What I meant to convey in that answer in experiments that I had already made. I satisfied myself that what was not done might be done in future, to accomplish the object sought for — that was to dispense with the billy."

Surely, no further proof can be needed to show this witness to be, both disingenuous and untruthful.

But it is further shown by the account he gives of his experiments at Dedham — he moved to Dedham in the fall of 1823, and started a woollen manufactory, about a mile from Lowder & Whiting's mill. And he leaves us to infer from that account in the direct examination, that *he* there perfected the carding machine for making the long roll by originating and applying the two doffers in place of the zig-zag and vibrating doffers used before; but upon the cross-examination, we show that he started the mill in Dedham with machinery for making and spinning the short roll, constructed specially for that mill and that purpose. And the account which he gives of the detail of his operations with the long

roll machinery shows him to be there again, going over precisely the same ground with the Lowder machinery, and performing the same operations which he described as his experiments at Halifax, (p. 388, cross-int. 268.) State what you did first at Dedham, in preparing machinery to make the long roving.

And after some attempts at evasion, he answers: "As nigh as I can recollect, it was the vibrating doffer with the condenser with an apron bottom and top rubbing roller, &c.," and proceeds to give a minute description of it which proves it to be the Lowder machine that he was again at work with. And when asked to state which of the experiments, he had testified about he tried next in order.

He answers "I should think, from the best of my recollection, two doffers." The introduction of the two doffers in place of a single doffer was an important improvement, as by the use of them the cylinder was not only more perfectly cleared of the carded filament, but the complicated mechanism necessary to vibrate the single doffer to strip it of the carded wool, was dispensed with. And the inventor of this improvement was entitled to great merit for contributing that upon which the success of the efforts to substitute the endless roll for the short roll, in the highest degree depended. And the testimony of Goulding in the direct examination shows a deliberate intention and purpose to claim that invention as his own.

It will be remembered that all the files and all the contents of the patent office were destroyed by fire in December, 1836. And but for the very extraordinary fact that Goulding's counsel, in the suits before referred to, incorporated the specification and claim of his several patents in the declarations in the writs, we should have been without any evidence of the description or specification of the several inventions patented. With the destruction of the patent office, we lost the evidence of the description of the inventions of others in this department of art, and among them the inventions of Lowder and Whiting, who preceded all others in this country. It appeared in the course of preparation for trial, and in the progress of the case, that Lowder and Whiting had obtained letters patent on the 25th June, 1824, for carding machinery for making the long or endless roll, but what invention it covered and whether it embraced any other than the single doffer, we are unable to show. Efforts were made without success, to find the original or a copy of the specification.

It was in evidence however that as early as 1824, Lowder and Whit-

ing had used the two doffer carding machines and Cooper had testified that he was sent by Goulding in the spring of that year to their mill to make listing and see what he thought of their plan of making the perpetual roll. And in view of the evidence on that point we may safely assume that up to that time, Goulding had not "tried any experiments" with the machine with two doffers. Now Goulding does not deny that Cooper was sent to Lowder & Whiting's mill to make listing. (p. 452, ans. to cross-ints. 908 to 912.

The Lowder and Whiting patent and the circumstances of its discovery show that Goulding's so-called experiments at Dedham with the two doffer machines consisted of the trial, use and operation of Lowder & Whiting's invention, and nothing more; and that he did not commence to use it until after Cooper had tried it, at Lowder's mill, and reported as he has testified. To these circumstances we now beg to call attention; they appear by the cross-examination of the witness on p. 400.

Cross-Int. 408. To Goulding. Didn't Lowder and Whiting have a patent for their machine for making the long roll?

Ans. I think they did.

Cross-Int. 409. Don't you know they did?

Ans. I bought a patent of them under that head. I suppose, that is the long roll.

Cross-Int. 410. When did you buy that patent of them — about what time?

Ans. I can't tell exactly, but I should think between 1820 and 1824. I suppose that can be ascertained by the patent itself — the time I mean.

Cross-Int. 411. Where is the patent?

Ans. I don't know.

Having thus disposed of as he believed, our search after that patent, he with evident assurance ignored all knowledge of any claim by Lowder & Whiting, either by patent or invention, to the double doffer improvements; we ventured another question.

Cross-Int. 443. You have stated that the Lowder & Whiting patent was purchased by you. What has become of that patent? He answered, "I don't know." When pressed with another question, however, cross-int. 444, what did you do with it? he answered, "I turned it over to Jordan, Marsh & Co. with my other patents."

Now, a candid witness willing to testify the truth and the whole truth would have given us that information when the first inquiry was made

after that patent; but it is evident that he did not intend to aid us in our search for it, if he could avoid it.

The reason is obvious — for the production of that patent enables us to prove that his claim to the originality of either the single or the two-doffer machines is a mere pretence and has no other proof to support it than the mere fact that he used or operated them in his factory.

The specification is to be found on p. 488, and we copy the following extract:

"The schedule referred to, in these Letters Patent, and making part of the same, containing a description in the words of the said Calvin Whiting, Samuel Lowder, Senior, and Samuel Lowder, Junior, themselves, of their improvement to the carding machine; being a condensing machine for forming the rolls of wool or cotton.

The ribbons, or narrow strips of wool or cotton, of which the rolls are formed, are made in several modes. They are made in carding machines constructed for that purpose, whose cylinders are covered with distinct strips of card filleting running in direct lines from end to end of the carding machine, around its various cylinders, but at such distance apart as may be necessary. They are made from the carding machines as now used by feeding the wool in right lines end long of the machine, and over a common full filleted doffer, with such lines of wool sufficiently asunder to prevent their sideway juncture. They are made by card-filleting placed around a delivering doffer in a curved or zig-zag manner. Or they are made by two delivering doffers placed parallel, the one above the other, and occupying the place of the single doffer; which double doffers have separate strips of card filleting passing in straight lines around their circumferences; but in such a manner that the strips of the lower doffer shall sweep those places left untouched by the upper doffer, thus clearing the main cylinder of its wool."

Now we find that this patent covers by a complete and exact description every modification of the single doffer machine used by Goulding, both at Dedham and Halifax, and all the operations which he set out as "experiments" — and it also covers by a like description the two doffer or double doffer machine which he used at Dedham — and furnishes further and incontrovertible proof of the specious nature of this witness' testimony.

One or two other instances will be sufficient to show this to be characteristic of his testimony.

In the early part of the cross-examination he intimated that the two doffer machines might have been started at Halifax, and he answered the cross-interrogatory in a manner to give the impression that he intended to say that in his *belief* the machine with two doffers was used at Halifax before he removed to Dedham and the examination in our effort to elicit an unequivocal answer covers several pages of the record.

(p. 380, cross-int. 169 to 175, p. 383, cross-int. 198, 205, 206, 208, 209, 214 to 222.)

With what success the answers will show.

Any one unacquainted with this witness or the character of his moral perceptions would say that by these answers he meant to assert upon his belief that the two-doffer machine was used at Halifax and we so accepted it.

In the course of the further examination upon this subject the next day the artfulness and cunning of his previous answers were exposed; to avoid a dilemma, he answered "In the first place, I never said positively to my knowledge that there were two doffers used there," and it will appear upon reading the answers again that it is true he only *seemed* to say so and that he had not committed himself so fully but that when challenged for it he could deny that he had ever said so.

We pressed so far for a *positive* answer that when asked (p. 385 cross-int. 228,) Do you recollect anything about it? the reply we received was "I recollect very distinctly living in Halifax and being about that mill and making different kinds of machinery such as altering a cotton mule and making experiments on wool carding machines."

And *this* he would let us believe he considered an answer to a question designed to elicit information about a fact so important as the use of that two-doffer machine as early as the time he carried on his business at Halifax.

His disposition to quibble is also shown by his answers to the questions on p. 417 cross-int. 593–596 relating to the double doffer. He was asked, (cross-int. 593.) Did you not know or hear that Lowder & Whiting had made carding machines with a double-ring doffer at the time you were carrying on your experiments at Dedham.

Ans. I confess I can't understand the question of a double-ring doffer; it is some term I am not acquainted with.

Cross-Int. 594. Do you mean to swear that you do not understand the meaning of that question?

Ans. The term is new to me, that is all I can say about it.

Cross-Int. 595. Do you, or do you not understand the meaning of that question?

Ans. I mean to say that I don't understand a question of a double-ring doffer, a singular — double-ring doffer.

Cross-Int. Did you never hear of a machine with a double doffer?

Ans. I have heard of machines with two doffers, but a double doffer,

as I should construe it, would be two doffers combined together in one, same as you might have seen two apples grow together, connected with each other.

Yet he had before this time spoken of the double-doffers several times, and was the first to introduce the term himself, upon the record. In answer to cross-int. 274 he said, "I tried different ways of feeding breakers with laps narrow and broad, single-doffers and *double-doffers*, two doffers in one machine" etc.

Again, two days before he comprehended, readily enough what was meant by double-ring-doffer. He was asked, (cross-int. 429, p. 401.) Was it because of the double-ring-doffer, that you expected etc.

Ans. I don't think it was.

Cross-Int. 430. Why, etc?

Ans. I have no recollection of their having any claim to the *double-doffer*.

And these two doffers were designated in the patent (which he bought from the inventors when the machine received its name) "double doffers."

This affectation of ignorance by a witness of the meaning of a question is as much a violation of the obligation due to his oath as a direct untruthful answer to a question; and this trifling with the solemnity of the oath ought to be regarded as a mark of moral unworthiness.

We could cumulate the evidence which this record contains of the character we ascribe to this witness, to a much greater extent, but we submit that sufficient has been already said to show that the degree of weight to which his unsupported declarations are entitled is not, to say the least, sufficient to overcome the credit due to the positive testimony of individuals and the probatory force of actions on the other side of the scale.

But we shall find his evidence, by which he claims for himself the credit of this invention, and denies it or any participation in it to others, to be characterized by the same cunning and deception which we have exposed in the foregoing pages.

We do not propose to consume time in exposing in detail his evasions, inconsistencies, contradictions, and deceptions, but ask careful attention to his testimony on the record. He contradicts every witness on the other side, and denies all participation in the invention by others, and claims all credit to himself in his characteristic manner. One or two cases illustrate the whole. When asked by counsel for the plain-

tiff (p. 355, int. 72), "who was the first to use or try, at said Dedham, a kreel for the purpose of holding the bobbins from which the first carding machine was fed,

Ans. "I was the man, in the same way that Solomon built the temple."

What he meant by this is left to interpretation. Solomon had his architect to contrive, and his craftsmen to construct; Winslow, we say, was the architect who contrived, designed, and planned this invention; and he was the handicraftsman who constructed it.

When asked who made other designated parts of the invention, he would answer, it was done by "my hands," and when it became apparent that this was not true, he would say he meant by "his hands" his "workmen in his shop."

The several accounts he gives of his first atttempt with the spool and drum with his own hands differ essentially from each other. In answer to direct interrogatory 64 (p. 353), "By whose direction was the first spool and drum made that was first tried on either of your carding machines, or either of your spinning machines at Dedham?" he said,

"It was me, myself; by my own order and by my hands, partly. I had some assistance; I wound the first strand or sliver of roving on a small piece of wood, bobbin you might call it, by hand," etc.

Direct Int. 65. You say in your last answer you had some assistance; please state what you mean by that.

Ans. I mean by that when I wanted a piece of wood to make my roller or spool of I would call upon any hand that happened to be nigh to fetch me such things as I wanted.

When asked (on cross-examination, p. 406), to describe what he did with his own hands, either in making or applying the spool and drum, or either of them, he answered, "I made the first drum that is now so called; It was not properly a drum in term of drum, because the term drum indicates something hollow; this article that I applied the spool on top of to unwind the roving was solid, and the spool without any heads; in the experiment both these articles were small and short, with wire journals in them sufficient to retain them in their places, and to show me that the roving would unwind from the spool without sticking together which was my only fear that I would have any trouble about; they were placed temporarily behind the machine, billy, or jack, whatever you may call it, sufficient to show me the operation of the drum and spool, or what you may now call the drum and spool; it represented what is now called such."

Cross-Int. 484. Did you turn the piece with your own hands which you say you used as a drum?

Ans. I did not; it was not turned for that special purpose; I took the first thing that I could get at in the mill, for that was all done in the mill; it required no more tools nor materials than what was to be found in the mill; it might have been a piece of a broom-handle; I am inclined to think it was.

Cross-Int. 485. Who assisted you in trying the experiment, or in applying or attaching it to the jack or "sort of billy"?

Ans. "I don't recollect; there was so little done that two could not work at it very well."

On the direct examination after the cross had been finished, (pp. 472–473, int. 187.)

He was asked by counsel for plaintiff in reference to this same act. "At what time was it you tried on the jack the experiment with the two pieces of broom-stick?"

Ans. It was in the evening.

Before or after the hands left the mill?

Ans. After.

Do you now recollect that any one else beside yourself was present?

Ans. I don't think there was any one.

Thus it appears, that on the 5th of May, in speaking of this step, the first and most important of all, the only one involving any invention in Goulding's opinion, and upon which the success of this whole improvement depended, he said, "it was done by his own order." This would imply that the labor was performed by others, at least in part, but to make it clearer he said, the work was partly done by his own hands; this certainly would convey the impression that the work was done in part by others under his order and directions and in part by himself, but to remove all doubt as to what he meant to say, he added, "I had some assistance," which he describes.

Now, on the 15th May, ten days afterwards, when he was requested on cross-examination to state "what part he did with his own hands," in making or applying the spool and drum referred to in the preceding answer, that we might see what was done by others, he said he did *all* that *was done* with *his own hands*, and to exclude all idea of any participation in it by others, he said further, he made his spool and drum of a piece of broom-handle, and when he was asked to state who it was that assisted him, as in his directed examination, he said substantially that he did it

alone. But when called upon two weeks later, the third time, and by counsel for plaintiff, to speak of this matter again, he said, "It was in the evening, after the hands had left the mill" and no one was present, thus excluding all idea of assistance from any one.

It may be asked why he at one time gives us to understand that this important step in the invention was done openly in his mill, in the presence and with the assistance of his workmen, and at another time tells us that it was all done with his own hands, by himself without assistance and in the evening after his workmen had left the mill? That is the question. He does not attempt to explain it.

In the course of the cross-examination, it became necessary for him in order to account for a variation in his testimony in reference to this, to introduce the "broom-handle."

The disclosure of so important a feature of the alleged experiment gave us at once a mark by which *this* trial of spool and drum with the jack could be distinguished from all others, for no workman who was present, whether he assisted in the labor of preparing it, or merely "brought him such things as he might happen to want," would ever forget so important an occasion as that on which the success of an invention which was to revolutionize the system of carding and spinning wool all over the world, was demonstrated by two pieces of broom handle. When Goulding found we were pressing to know who worked on the first spool and drum "by his order," what he did and what assistance he rendered, apprehending the consequence of the disclosure of names, he said he did not remember, but added, "there was so little to be done that two could not work at it very well," implying, if not saying, he did it alone; but finally he arrests all further enquiry in that direction by saying he did it all himself and by himself alone in the mill after all had left.

Now this may account for the change in his testimony. While it might be impossible for a workman to distinguish one occasion from another on which spool and drum were applied to a jack, it was safe to admit what would add to the probability of his story. But after so distinctive a mark as the "broom handle" was brought out, it was safer to dispense with all witnesses.

If it had been true, as Goulding has testified, that he made the first spool and drum and tried the first experiment with two pieces of *broom handle,* he would have so described it in the first instance. He wouldn't have deferred alluding to the broom handle until the cross-examination drove him to the alternative of having a turning lathe in the mill or picking up the spool and drum ready made from the floor.

All the testimony in support of the plaintiff's case so far as relates to the originality of this invention, comes from Goulding alone, and not one witness has been produced from among the surviving workmen employed at his establishments in Halifax and Dedham to add a tittle of evidence in support of his pretended claim as originator of this invention.

Now, Goulding's workmen knew the difference between operating a machine and "experiments" made in the progress of an invention, and if he had made any "experiments" in the correct sense of that word, either at Halifax or Dedham, they would have been known to his men, and we struggled for days to draw from him the names of his workmen who were present about his premises while any one of his alleged experiments were going on, without success, as many pages of the record shows. And it was only by the most persistent efforts that we were enabled to obtain the names of any of them, as a few extracts from the record will show. (p. 372.)

Cross-Int. 63. How many men did you have employed in the machine shop at Halifax?

Ans. In the neighborhood of ten.

Cross-Int. 64. Give their names as near as you can.

Ans. I can't give their names.

Cross-Int. 65. Can't you give the names of any of them?

Ans. No.

Cross-Int. 66. Didn't you have a brother-in-law work for you there?

Ans. There was a man by the name of Farnsworth that we married sisters. I don't know but that he did.

Cross-Int. 67. Have you any doubt about it?

Ans. I should think likely he did work there.

Cross-Int. 68. Don't you remember that he did work for you there?

Ans. I should think I did.

Cross-Int. 69. What was his christian name?

Ans. William.

The disclosure of Farnsworth's name compelled the plaintiff to call him as a witness. He was Goulding's brother-in-law, and if there was any truth in Goulding's statement about these experiments, this man would corroborate him.

Mr. Farnsworth was therefore called as a witness on behalf of the plaintiff, and was interrogated about the operations (p. 450 to 457) with long roll machinery, but could not give any reliable information concerning them. Did not remember whether they were at Halifax or Dedham,

nor could he describe any particular operation. In answer to the many leading questions in the direct examination, he said; "Well, I should think he did, but won't be certain." "I think he tried them there, but won't be positive." "I think he did, but I may be mistaken." "It is my impression he did, but I won't say certain, he might not till he got to Dedham," and others of similar import and expression.

Now, it is evident Farnsworth's deposition was not taken by plaintiff to prove anything in support of his claim, but that he was made a witness because he remembered nothing and would be harmless, as they supposed.

Cooper, it will be remembered, in describing the origin of the invention, and the steps taken in developing it said, (p. 68,) he, "Winslow said he would make a drum and spool from pasteboard. I went with him into the west end of the factory and picked out the pasteboard. Winslow took it under his arm, went to the machine shop, and turned some heads for both spool and drum. About the second day from that time he brought them into the factory" etc.

And feeling fully assured that that was true, we asked Mr. Farnsworth if he ever heard at Dedham of such a spool and drum? (Cross-int. 39.) He answered: "I don't know but there was such a one when he first commenced, covered with pasteboard, with wooden heads. I would not say whether there was or was not, as I do not recollect."

Here was evidently a conflict for a moment between conscience and bias, or some other influence, but the truth had been spoken, and conscience prevailed, for he immediately added, "You have reference to the jenny, I suppose," referring to the spinning machine, afterwards called the jack.

Goulding had previously in testifying, declared without any qualification whatever, that at no time had there ever been used, in any stage of this invention, or in his mill, a pasteboard drum with wooden heads. Now Cooper was not only hereby corroborated by plaintiff's own witness but Goulding contradicted by his own brother-in-law.

And further, in answer to the question, (cross-int. 23) Have you not said that you always understood while at Dedham, that Edward Winslow got up the first spool and drum for experimenting on the woollen machinery, or something to that effect? He said, "Well, there was such a report there at Dedham by some of the hands;" and here evidently thinking he had admitted too much, added,—"but I never supposed he got it up."

Now could there be *any* doubt that a spool and a drum made of pasteboard, with wooden heads, were used in their first experiments? If so much be true, Cooper is fully corroborated. You cannot leave a line out of his statement without destroying the whole. You cannot accept a line without accepting the whole. If true in part, it must be taken to be true in the whole of its extent.

An attempt has been made to impeach the veracity of Mr. Cooper. We will not consume time by going over that track. If the Court ever read that part of the testimony on the record, it will find it to be a flagrant abuse of the privilege which the law gives to a party, of taking depositions touching the reputation of a witness for truth or veracity.

And we do not hesitate to say, that the record shows, not the honest inquiry after the reputation which this witness sustained in the community in which he lived, as a truthful man, but a search after men who would be willing to swear either from the bias of revenge or interest, anything discreditable to Mr. Cooper; and this record is made a vehicle to perpetrate scandal, which whether true or false, would never have been spoken or written, if the witnesses had been in the presence of the Court under the restraints of law, when they told their stories. The restraints usually self-imposed by "sense of propriety," were insufficient to protect him from unmerited and unwarranted attacks upon his character for honesty and integrity, and much of the record is occupied with the trial of charges of which he was innocent.

The plaintiff called about forty persons to swear against him; and we may venture to say, that not one of them has given testimony that will be considered by this Court legally competent in any degree to prove reputation as to veracity, as not one has been asked the question by the party who called him, Whether he knew the reputation of Cooper for truth or veracity; and not one has said in terms that he knew what his reputation was.

Extraordinary exertions were made to find men who were willing to appear against him.

A lawyer, who formerly had Mr. Cooper's confidence, and who knew all who had any controversy with him, was employed to marshal these witnesses, and, it is believed that many of them who could not distinguish between reputation for veracity and individual aspersions were told that it was right to swear against their neighbors' reputation for

veracity, because some one had said he was immoral. That some of these witnesses testified under this instruction we think is apparent from the record and without comment.

Another fact showing the character of this attack by the measures resorted to should be mentioned; this man attempted to dissuade one witness, (how many more we do not know,) from appearing and testifying to facts showing the fradulent character of this attempt to impeach Mr. Cooper, (dep. of George P. Cleaves, p, 1058. int. 4.) Did A. S. Marshall last night say anything to you about not coming to Boston to testify in this case?

Ans. "He asked me if I was coming. I told him I was. He said he would not come down himself to testify if he was summoned.

He gave me to understand that I was not obliged to come if I *was* summoned."

Now Marshall knew Mr. Cooper's reputation for truth as well as any citizen of Concord, yet he did not testify.

Another fact should be mentioned in this connection.

Some of these witnesses undertook to give on cross-examination, the sources of their information by which they testified, and in almost every instance the person named was called by us and contradicted them, as the record will show.

Many who had been called upon to testify against him, voluntarily came forward to testify in his favor, and it is safe to say that the name of every man who could be found to appear against him, is on the record.

Either of the depositions on behalf of the plaintiff may be taken as a type. The course of examination in chief is substantially as follows.

"Did you ever hear his character in other respects than for truth discussed?"

"Didn't you ever hear anything said against his moral character?"

"Didn't you ever hear he tried to cheat a railroad?"

"Didn't you hear some scandal about him and one of his neighbors?"

"Would you swear positively that you never heard it remarked he was tricky or dishonest or anything to that effect?"

"Will you swear that you never said he was unreliable?"

"Will you swear you never said you had no confidence in him?"

On the other hand we have the testimony of two to one, and of the most respectable citizens of the places where Mr. Cooper has resided the past forty years, (for the plaintiff went back to 1825,) well acquainted with

him and his business and social relations, mayors and ex-mayors of the city of Concord and other cities, aldermen, members of the Common Council, officers of the city, judges of the courts, members of the legislature of New Hampshire, members of Congress, officers of the United States government, citizens of Concord generally, each testifiying that he knew Mr. Cooper's reputation for truth and veracity, and he knew it to be good, had never heard it questioned.

Mr. Cooper had been a few years before engaged in a very large and successful business in Concord, N. H., employing a great many men, and controlling large means and occupied an influential station in society. Misfortune had overtaken him in the midst as he supposed of his prosperity, and he has to suffer the common lot.

The plaintiff failing to impeach Mr. Cooper's character for truthfulness, resorted to other means to impair his credibility; unjustly charging him with an attempt to lead the plaintiff into a corrupt bargain to pay him for leaving the country, that he might avoid giving his testimony against him.

That Cooper called upon Goulding, in Worcester, that Goulding had not seen him before for upwards of forty years, or since he left his shop in 1824; and that a conversation took place between them in reference to the patent, and that during the conversation Goulding asked Cooper to stop a few moments and left the premises and remained absent fifteen or twenty minutes; and while absent despatched a telegram to Boston in these words: Jordan, Marsh & Co., "Send Ball or Fiske up here this P. M. — John Goulding;" and that he requested him, Cooper, to call in again in the afternoon, and that in the afternoon he met Mr. Clarke and Mr. Thayer, the agent of the plaintiff, from Boston; and that Mr. Thayer requested him to stay there until next day that a certain other person might see him; and offered him money to buy clothes, and said if that person did not get back that day, he wanted Mr. Cooper to stay until Monday; and that after Clarke and Thayer left, a further conversation took place between Goulding and Cooper are facts either admitted or not disputed.

What occurred between them on that afternoon is stated by Cooper on page 85. And while Goulding admits that conversation was in substance as stated, he denies that the proposals for leaving the country were made by him, and alleges they were made to him by Cooper.

We do not deem it necessary to go into any extended investigation of this controversy. One fact is evident, that Cooper's appearance before

Goulding, after the lapse of forty years, made it so important in his judgment that the parties interested in this patent, or their counsel, should see him and talk with him without delay, that he gave a peremptory order by telegram to send one or the other to Worcester that afternoon. What his purpose or motive was we are not told, except as we may learn from his examination on that subject, which is as follows. (pp. 453, 454.)

Cross-Int. 923. Did you not telegraph to some one in Boston to send Mr. Thayer, or some one else up to Worcester?

Ans. I don't remember about Mr. Thayer; I telegraphed to Boston, and in consequence of that Mr. Thayer came up.

Cross-Int. 924. Did you telegraph to Boston because Mr. Cooper was there?

Ans. I did.

Cross-Int. 924. Did you telegraph to Jordan, Marsh & Co., or some agent of theirs?

Ans. It was either Jordan, Marsh & Co., or Messrs. Brooks & Ball.

Cross-Int. 926. Did you want Jordan, Marsh & Co., or either of them, or some one representing them to see Cooper, or meet Cooper there?

Ans. I had no wants about it; it was nothing to me. I thought I would let them know that Cooper was there and they might act their pleasure to come up or not to see him.

Cross-Int. 927. Did you simply inform them that Cooper was there?

Ans. My impression is that I did, but I can find that out at the telegraph office. P. M. I now have the original telegram, which is here produced by complainant's counsel and reads as follows: "Worcester, Received at Boston, Sept. 2, 1864. To Jordan, Marsh & Co. Send Ball or Fiske up here this P. M. — John Goulding."

Cross-Int. 928. Why did you send that telegram?

Ans. Because Mr. J. D. Cooper was there.

Cross-Int. 929. You wanted Mr. Fisk to see him, did you not?

Ans. No. I did not care anything about it; it was nothihg to me whether they saw him or not.

Cross-Int. 931. Why did you want them to know that Cooper was there?

Ans. I don't know that I can give any particular reason.

Now, at the time he sent this telegram, not one word had been said about leaving the country to testify — that subject was not mentioned

until after Thayer had obeyed the summons and left. That part of Mr. Cooper's narration of this conversation at Worcester which precedes the telegram is stated as follows. (p. 85, ans. to cross-int. 176.)

"I called into Mr. Goulding's shop. When he see me almost the first thing he said, Cooper, do you remember the Lowder machine and condenser? I told him I did. I said, do you remember when I came from Lowder & Whiting's mill, from making listing yarn what I said? Yes, he said, I remember that you told me the principle of making the roll was good, but it plagued very much about stretching and other times would come through double — make some large threads and some small ones. You told me it must be wound up on a bobbin or a spool. Mr. Goulding said, 'did I not wind it up?' I said to Mr. Goulding, it was wound up in your mill." Mr. Goulding does not deny this as stated, but in answer to a question adroitly put, he denies having said, "you told me it must be wound up on a bobbin or a spool." If this conversation had not occurred substantially as the witness had stated it, Mr. Goulding would have been asked if there was "anything said to that effect," in relation to the other portions of the statement. And we may assume as proved that so much of the conversation took place as Cooper states it.

Now, what was there in that to make it so important that the owners of this patent or their counsel should make a journey of fifty miles that day to have an interview with Cooper?

Goulding says, the reason for telegraphing was that he did not know how long he would stay there; that is a good reason for calling them by telegram, rather than by letter to the interview; but we are seeking now for the reason he had for bringing them together.

Goulding's story is confused, and contradictory. He says, he thought he would let them know that Cooper was there and they might act their pleasure to come up or not to see him;", and that he simply informed them by the telegram that Cooper was there. Now, this was false, as the production of the telegram afterwards showed; for there is not one word in the telegram about Cooper. He gives us no explanation further than this: "it was nothing to him"; and for the reason we say, he had no interest in the patent; he had sold out to Fiske and his co-partners, Jordan and others; but it is very evident he thought it was *something to them.* And that we might have all the light Goulding could give us, the plaintiff's counsel asked him in the direct examination resumed, this question, (p. 474, int. 199): Had you any object in telegraphing to

Boston, other than to give the plaintiff's counsel or Mr. Fiske an opportunity of finding out what Cooper intend to testify to?

Ans. Not in the least any other.

So that, Mr. Goulding had no interest in the matter, other than to bring Cooper and the patentees or their counsel together, that they might know what he could testify against them.

Why did he not give that answer when he was asked by us several days before, p. 454: "Why did you want them to know Cooper was there," instead of answering as he did, "I don't know that I can give any particular reason."

We may find the reason in the surrounding circumstances, where we must look for it, rather than in this witness' sincerity or candor.

The circumstances undisputed are, That in the afternoon of that day, and in obedience to the telegram, Mr. Thayer (who appears conspicuously in this record as the agent of the plaintiff in connection with this patent) accompanied by another gentleman connected with the house of Jordan, Marsh & Co., met Mr. Cooper at Goulding's shop and was introduced to him by Mr. Goulding. Mr. Thayer and Mr. Goulding stepped out together, and returned after an absence of some minutes. Mr. Thayer asked Mr. Cooper to remain in Worcester until the next day to meet another person whom he wished to see him, and said if that person did not return he should want him to stay until Monday. And to remove the only objection Cooper made to remaining, he offered him money or to buy him clothes, saying they had plenty of money. Mr. Thayer left, but did call again while Cooper remained in Worcester.

Immediately after Thayer left, Goulding and Cooper had a conversation about the payment of money as a consideration for leaving the country to avoid giving his testimony in this case. That there were two conversations on that day — one in the morning, before Thayer came, and another in the afternoon, after Thayer left, Goulding admits, (cross-exam. p. 455) and that the conversation about money took place in the afternoon. "That was confined to one interview." (p. 456, ans. to cross-int. 952.)

That Cooper remained several days, but there was no other conversation about leaving the country, etc.

Now, although Goulding in his haste to give the parties interested in the patent "an opportunity of finding out what Cooper intended to testify," summoned them by telegram rather than run the risk of losing it by waiting the slow process of the mail, and although Mr. Thayer had

travelled fifty miles to secure this important end, they meet and part without one word on the subject of what that evidence was. Surely this could not have been the motive of the telegram.

Again, Cooper up to that time had not said he should testify against the patent. He had simply said in answer to Goulding's appeal "Didn't I wind it up?" — "it was wound up in your mill, Mr. Goulding," and it was at this stage of the interview Goulding orders some one up from Boston "to find out what Cooper intended to testify." Why didn't Goulding ask him? and why didn't Thayer ask him when he appeared, after travelling fifty miles for the purpose? The answer is, because that was not the object either of the telegram or the journey. It was to let them know there was danger. Cooper had not been heard of for forty years or more, the trial of the case *vs.* Lombard had ended and Cooper had not appeared, and probably was forgotten or supposed to be dead. But as soon as he did make his appearance, danger was imminent, and Mr. Goulding knew it, and it was not necessary for Cooper to wait to enable him "to find out what he intended to testify." He knew full well what he would testify if he testified at all. And when Cooper is giving "side way hints" and alleging that his presence here will defeat that patent and his absence save it, there is not one syllable from John Goulding's lips of denial, but he listens and talks with him as if it was true that he could break up the patent if he staid in the country, or that he could save it by leaving. Instead of indignantly denying that he could truthfully testify anything which could or ought to affect that patent, he asked him how much it would cost to go out of the country — and this we prove out of his own mouth. "I said, out of mere curiosity," (says he) "to see what length he might go. I asked him how much it would cost," etc. (p. 474, ans. int. 198.) Why should he wish to see what length he would go?

That instead of asking him what testimony he could give that would "break down that patent," or to explain what he meant or how he could sustain it by leaving the country, he asked him how much he would want to leave the country. It is not only manifest that Goulding has given a false reason for sending the telegram, but that the real reason is apparent, and that telegram was despatched as soon as Cooper made his appearance from a conviction that unless Cooper was prevented from testifying in this case all was lost; and Fiske, or some one else clothed with authority, must without delay, and before it was too late, hasten to Worcester to consult as to the best means of averting the danger. And what followed in the afternoon was the result of that consultation.

This is not only proved by the circumstances which preceded, but it is confirmed by those which immediately followed it.

Goulding has said (in answer to interrogatory 97, p. 357) to show that he could not have made the proposal to Cooper as alleged, "If I had been ever so much disposed to hear or consent to any such thing, he would have been the last man I should have picked out to do such business, or selected, knowing his former character, that he would not do to be depended upon, if I had been disposed to do any such thing; *therefore* I countenanced nothing of the kind."

The premises of this argument are false, as well as the conclusion.

Now the relations between Cooper and Goulding during his stay in Worcester were of the most cordial and intimate nature. He entertained him at his house, confided to him family and other secrets as we have proved. Cooper says (p. 869, ans. int. 28, etc.), that while visiting him at his house in Worcester, the time referred to, he told him "he had sold out his patent for one hundred thousand dollars, and got it all in his pocket where the Winslow gang could not get it, except his house, that they had attached." "That when they attached his house he had ten thousand dollars worth of wool in Boston; he went quick and put that out of his hands — his United States bonds he put into another man's hands as his own property. Then he was afraid he would turn rascal, and he took them away from there and put them into the bank, and they were there awhile; and he then took them from the bank and put them in his own safe where they were now. That he had the patent taken out in his sons' name, as he was afraid to take it out in his own name; and that his sons had connived between them to work him out of the whole thing; they actually sold the patent, all but making out the papers, or signing them, and that he heard of what was going on; he found they were going to Boston the same day; he followed them to Boston in the same train, came to Mr. Mason's office, a lawyer, found his son sitting in the office with Mr. Mason; when he entered the door Mr. Mason says, Mr. Goulding I wish you to go out and be gone thirty minutes, for I want to talk to that villain, shaking his hand at the same time. He went, he said, and was gone thirty minutes. He went back and found the boy crying very loudly. He had given the papers all up to Mr. Mason and it was all put back into his hands. He started, went down to Jordan, Marsh & Co.'s, and sold it to them for one hundred thousand dollars, and they were to run their own risk.

That these facts actually occurred we proved by the cross-examination

of Goulding, long before Cooper testified in relation to the conversations. Goulding has denied that he ever invited Cooper to his house; saying he forced himself upon him. That this is not true we prove by the testimony of Dr. Joseph N. Bates (p. 854). This gentleman is a practising physician in Worcester, and testifies (ans. to int. 8). "On the 3d September, a year ago, as I alighted from my carriage upon the sidewalk, I met Mr. Goulding coming out of the news-room. Mr. Goulding accosted me by saying, Are you making a doctor of Mr. Cooper? I replied by saying, I did that several years ago. Mr. Goulding then asked Mr. Cooper to come to his house; come to-morrow evening and dine with him. Mr. Cooper demurred, saying 'I don't know what my engagements may be.' I then remarked to Mr. Goulding, he will come and dine with you. I will bring him there." Could Goulding have invited to his house in this cordial manner, a man to meet his family in social intimacy, who had falsely asserted to others as well as himself that which, if true, would not only deprive him of his title to this patent, but show him to have been guilty of perjury?

Would he have talked over with him his private matters and family secrets, and entertained him at his house, while waiting the results of negotiations for the suppression of this alleged evidence — or "while waiting to be bought" if it were all a mere pretence?

Mr. Thayer's account of the interview at Worcester also requires attention. (Called by the plaintiff.)

He says (p. 584): "I went to Mr. Goulding's machine shop; I met Mr. Goulding coming out of his shop; asked him what he wanted by sending the telegram. He said, "there is another fellow in here who pretends to know more about the patent than I do." I asked him who it was? He said it was a fellow by the name of Cooper; I told him I had heard of him before; I went into the shop, and was introduced to him. What took place is related as follows:

Int. 24. Did said Cooper upon your being introduced to him, request you to make any proposition to him? If yea, what did he say upon that subject?

Ans. He did; that is, he wanted to sell. He said that if he was out of the way, the Goulding Patent would be gained; but if he gave

his evidence, it would be lost. That the best thing to be done was that he should be got out of the way. He wanted me to make him a proposition to leave immediately; that if I did not do so the other side would; that he had got him in a corner, so that he would have to give his deposition if they caught him. I told him I would like to know what his evidence was, and wanted him to see the gentleman who was then out of town, and I did not expect him back till Monday. He was very anxious for me to make him a proposition, and said that he could go to Canada, where he would be out of the way. I told him that I was not buying up evidence, but that I would like to have him wait and see this gentleman. He said he wanted to go right off and could not wait. I wanted him to wait till Monday. He said he could not do so, for he had not any clean clothes. I proposed, in a laughing manner, to buy him a clean shirt, if that was all he wanted. He declined having me buy him a shirt, and said he would wait over till Monday.

Int. 25. Who was the gentleman you wanted him to see?

Ans. I wanted Mr. Ball to see him, to see what his evidence was.

If we knew what was said by Goulding to Thayer outside, before he was introduced to Cooper, we should know what that "something" was, "they should suppose they might come up for," in obedience to that imperative telegram, but that is not disclosed.

But these facts do appear that Goulding summoned from Boston, parties interested in this patent, that they may be introduced to a "man who pretends to know more about the patent than he does." And hears him declare to the agent of these parties if Mr. Thayer's account can be taken as true, that if he was out of the way, the Goulding patent would be gained, "but if he gave his evidence it would be lost," and that the best thing to be done, was, that he should be got out of the way — without one word of denial or contradiction, and listens with acquiescence while Mr. Thayer entertains a proposition for the suppression of this evidence.

It is immaterial whether Goulding or Cooper first made the proposal; the very evidence offered to discredit him, proves the truth of the facts he asserts.

A similar attempt was made to draw Mr. Winslow into a negotiation for the suppression of testimony.

Mr. Thayer proposed to buy his interest. He was asked p. 60, cross-int. 115, "What sum did you tell Mr. Thayer you would sell for?"

Ans. I do not now recollect. Mr. Thayer came to Lowell a number of times, and pretended that he wanted to buy all the interest the Winslow heirs had in the patent or improvement. He said he would buy it and sell it to those who would give the most for it. He said it was nobody's business if he sold it to Jordan & Marsh.

An ingenious plan to destroy the credibility of witnesses whose testimony could not otherwise be controlled, and calls for no further comment.

We respectfully submit Mr. Cooper's statement of the origin of this invention is fully corroborated, and that we have proved that the several combinations claimed on this patent, were invented by Edward Winslow and not, as claimed by John Goulding.

It may be said, and we suggest it as possible because it has been said before and not because the evidence in this case furnishes the slightest warrant for saying it, "That there is no pretence that Mr. Winslow suggested the traverser, which is an essential and indispensable part of the winding apparatus."

We not only pretend that he did it, but we have proved it. Mr. Cooper says (p. 68, ans. int. 6), "Mr. Goulding was not present at any time while Winslow was at work upon the invention — that he never saw the spool and drum until they had it on the jack."

Now, when it was on the jack the spool contained the rovings in their proper position, side by side. They could not have been placed there but with the aid of the traverser. "It was an essential and indispensable part of the winding apparatus." Mr. Goulding does not pretend that *he* ever invented a traverser to the winding apparatus. In his earnestness to deny that Winslow had any agency in the application of the winding apparatus, he speaks of it as a thing well known and used in cotton machinery for winding up roving. (p. 405, ans. to cross-int. 472.) He says:—"The winding *on* was not a matter of any doubt about, for the process had been fully demonstrated of winding *on* to the bobbin on the periphery of a drum as early as I had any knowledge of cotton being spun."

Again, (p. 415, ans. to cross-int. 576,) he says he made no experiments on the carding machine with spool and drum, "for the reason

that winding up with the spool and drum was perfectly familiar and had been for many years in winding cotton roving. I had no doubt in the winding — it was only in the unwinding."

Again, Mr. Goulding was asked (cross-int. 571, p. 414), "what were the directions which you gave to your workmen when you ordered the first spool and drum to be made which were used on the card to experiment with?

Ans. It would be like these; I should tell them to prepare a shaft of iron a certain length and diameter, turn two journals on it a certain place on the shaft; then put on three heads upon it, — wooden heads, and fasten them on in three distinct places, turn them off to a certain diameter, cover them with wooden lagging, turn that off again as large as it would go, and a certain length; then prepare boxes and put them on the frame for the journals to rest in; put a pulley on one end of said shaft that would project out to the side of the frame for the purpose of putting the belt on to receive its motion from some fit and proper shaft, and then to make a spool a certain length and a certain diameter, with a journal projecting out at each end, and on each end of this spool attach a head, for the purpose of retaining the roving as it was wound up on the bobbin. This spool must be retained parallel on the drum by a latch at each end of the bobbin, or it might — the ends might drop into a slot for that purpose that was put on to the frame."

And the spool and drum so made, he says, would be such as were used on the cards for general use (ans. to cross-int. 572).

Now we do not have a single word here about the traverser. He doesn't pretend that he ever invented it, and there is nothing in this record to warrant the assertion that he did; again, he expressly disclaims each and every part of it.

The evidence proves, if it proves any of the alleged acts of Edward Winslow, that he invented the winding apparatus as it is described in these patents.

How can it be gravely said that "Goulding had to use his inventive power upon the winding apparatus before it could be rendered of any practical importance whatsoever?"

It has also been said and may be again, "that the only reason relied upon, except abandonment, why this patent is not valid is that a workman suggested to Goulding how to give motion to a spool"; but we have proved that the method of feeding the cards for spools filled with rov-

ings placed in a kreel, and passed between guides, was also invented by Winslow.

Mr. Cooper says on this subject (p. 90, int. 31 and ans.), "whether or not there was any change, if so, what, after the spools and drum were introduced or applied to the finisher?"

Ans. "There was a change; I proposed to Mr. Winslow to wind that upon a spool and drum, spool on drum, I mean to say, the same as we did our roving from the finisher, and he fixed the spool and drum, with the other fixtures, and put it a going; then we took the feed-board from the finisher and made a kreel, as we called it, on a half circle; put those spools on to the kreel and put what we called wooden fingers, up to the feeders, then put that roving from the spools between these fingers and the breakers, feeders, I would say, carried it into the finishing machine."

How can it be seriously said in view of this evidence, that "the only reason relied upon except abandonment, why this patent is not valid, is, that a workman suggested to Goulding, how to give motion to a spool"?

And while we concede to this system all the merit that may be claimed for it, we insist that the credit should be awarded to whom it belongs, and that Mr. Goulding is not entitled to what is here claimed for him. "The whole general plan and all the means of executing it." Without either admitting or denying his claim to "this whole general plan" we do affirm that he has no claim to the means of executing it, that part of this valuable invention was made by Edward Winslow. And the claim now set up to the means of executing it, viz: the combinations of machinery employed, is made, because in no other way can the manufacturer be compelled to pay tribute to this patent, as neither the defendants nor any woollen manufacturer that we are aware of "use the whole of this general plan."

If this general plan be described here as it has been claimed before on behalf of plaintiff, it will be said that it is an essential part of the process that on the finisher the strands must be fed to the machine, so as to be kept separate, as each of the fillets is to preserve its separate identity after it has entered the machine, and is to be delivered as a separate fillet upon the spool at the end.

And this is the method Mr. Goulding claims to have invented for producing a sliver of a uniform size when taken from the delivering cylinder of the finisher card (p. 21).

While in the second breaker they are to be mixed on the card into a homogeneous mass and this is effected by an essentially different combinations of means.

That is, the combination which effects a thorough mixing of the mass, and that which preserves the identity of the strands of sliver as they pass through the machine are essentially different.

Now the plan employed by the defendants for producing a sliver of a uniform size when delivered from the doffer of the finisher card is essentially different. In defendant's machine the slivers are fed so as to be thoroughly mixed or spread over the cylinders, and especial means are employed to prevent them from passing through separately, preserve their identity. And the uniformity is effectually obtained by a provision ingenious and valuable, differing entirely in principle from the plan of Goulding, overcoming the difficulties incident to his plan.

In Goulding's plan the upper doffer produces a sliver larger than that the under doffer delivers. The difference between Goulding's plan and the defendant's plan is clearly shown in the deposition of Mr. Stetson (p. 218, ans. to ints. 28, 29, 37). "Whether or not you have examined the carding machines in use by the defendant, and in operation at its mill in Hamilton; and whether or not you have seen the same in operation? If yea, state whether or not the rovings are kept separate on the third carding machine, or finisher, during the process of carding."

Ans. I have examined the machines to-day very carefully and thoroughly. The rovings are not kept separate, as is described in the patent of Mr Goulding, the plaintiff's patent, but are worked together. There is no such space between the fibres to keep the rovings of uniform size when they are delivered, as is described and treated as an important feature in said patent and in the ancient patent of which it is, or purports to be, a reissue. The material lies on the finisher, or third carding machine in a continuous layer, and is delivered in rovings of uniform size by entirely different means. They are not kept separate during the process of carding.

Int. 29. What provision is made for taking the rovings or strips of carded material from the machine of uniform size?

Ans. The fillets of card, or belts of card material, on the upper doffer, are narrower than those on the lower doffer, and sufficiently nar-

rower to compensate, or very nearly compensate for the tendency of the belts on the upper doffer to grasp more than their share. It is of course understood that there are two doffers one above the other; each provided with belts of card, and with blank spaces separating them, and so placed that the belts on the lower doffer take the material which escapes by passing opposite to the spaces on the upper doffer. If the belts on the upper doffer and the lower were of exactly equal size as in some of the English patents of the last century, and in Mr. Goulding's machine, the belts of clothing on the upper doffer would take all from the main cylinder that is presented to it, and a little more by reason of the crossing and entanglement of the fibres and the belts of clothing on the lower doffer would receive less than their share, because their edges would act on a part of the main cylinder from which the fibre had been partially abstracted by the belts above. That would make the rovings from the lower doffer smaller than those from the upper doffer provided Mr. Goulding's plan of leaving a vacant space or a space bare of fibre around the main cylinder between the several rovings, each carded separately and without contact with the adjacent rovings. In the defendant's the rovings are not thus kept separate, but the fibres meet each other, and form a continuous layer in their passage through the carding machine and the same fibres which formed each original roving or an equal quantity after they had been thus carded together, is separated by the modification in the belts or rings which I have described on the doffers. It is common to reduce the quantity taken off by the upper doffer, not alone by narrowing the strips of clothing thereon but also by setting the upper doffer a little further off from the main cylinder than the lower doffer. This is not practised, I think, to any great extent in the defendant's mill. But the difference in the width of the belts itself sufficiently combats the tendency of the upper doffer to take more than the lower.

Int. 37. What are the comparative advantages of the method of feeding the finisher as pointed out in the Goulding Patent and the method of feeding used by the defendant?

Ans. The Goulding method will separate or rather keep separate the several rovings so as to give more complete equality in size while the defendant's plan will allow much more business to be successfully done by a given size of carding machine; the difference as a whole, is greatly in favor of defendant's plan, because it will divide them evenly enough for all practical purposes, and will card, say, twice as many rovings, twice as much wool in the same time as the Goulding plan; either plan

may be used on carding machines of any width. If Goulding's plan is used on a card of a given width, say forty inches, the defendant's plan will card the same amount on a narrower card or much more on a card of the same width.

And the specimens referred to in the answer of this witness to int. 39, p. 229, and are marked Exhibits V and W.

Now it would hardly be contended that the defendant's plan would be an infringement of a patent, covering the general plan described by Mr. Goulding irrespective of the claims for the combinations of machinery employed.

II.

ABANDONMENT.

II. That the invention had been in sale and in public use, with the consent and allowance of Mr. Goulding, a long time prior to his application for a patent (more than two years), and that he abandoned the same to the public.

Prior to the 21st November, 1824, and as early as August of that year, Mr. Goulding sold and delivered to Pitts & Buffum, at Mendon in Massachusetts, one double carding machine and one single carding machine, one jack with one hundred and twenty spindles, a description of which is given by Mr. Buffum; his deposition is on pp. 707, 708, etc., he says: "The double machine was a breaker. The wool was fed to the breaker in divisions, and went through in divisions, and came out on a large drum, it was then broken off and fed up to the finisher the single machine in divisions, and went through in divisions, and was taken off by a doffer or doffers, covered with strips of card; it passed from the doffer to a vibrating condenser. It was condensed into roping and wound upon a spool, the spool was turned by a drum on which it rested. There was a device on the finisher for keeping the wool in divisions as it was fed in."

"There were partitions on the front of the machine for each piece of roping. These guides were wooden strips and fastened to the front of the machine before the feed rollers."

The condenser differed from the machine now in use in this—that in this machine of Pitts & Buffum — there was a leather apron used under the vibrating rollers — and there was a trifle difference between these rollers and the present rollers used — but the effect on the roving was the same. As it passed under these rollers it was wound up on spools. It is now wound up the same way by drum or drums. The drum caused the roving to be wound on the spool by revolving with the spool laying on it.

A further description is given of this machinery in ans, to cross-ints. p. 713, cross-int. 50.

"The roping taken from the condenser was spun on the jack. The jack was constructed the same in principle and operation as the jack now in use, and known as the Goulding jacks, perhaps not so fine workmanship. It was every way the same, with regard to movements the same thing." (p. 708, ans. to int. 12.)

These machines were used by Pitts & Buffum till 1830, and after that time by the witness individually and the heirs of Esek Pitts, until 1849, when some or all of it was burnt up (p. 709, ans. int 24). This machinery was delivered at that mill prior to November, 1824.

Mr. Buffum in the early part of his testimony stated that the machinery came to their mill before the last of November, 1824, and fixed the time from the fact that Mr. J. D. Cooper came from Goulding's mill, the place where they were brought, to work on these machines, and that he found a charge in his own handwriting in his account book, to John D. Cooper under that date (p. 709), and that the machine had been brought three or four weeks or more before that time.

After the introduction of much testimony showing approximately the time of the delivery of these machines at Pitts & Buffum's mill, the time-book of Pitts & Buffum was found and produced, and it showed that Cooper commenced to work for Pitts & Buffum on the 20th November, 1824 (p. 1007, ans. to ints. 2, 3, 4, Mr. Buffum's 2d dep).

It was evident by this that the machinery came to the mill before the 20th November, 1824. Another fact however, connected with these machines at Pitts & Buffum's mill, was that one of the operatives named Olive Prentice, was hired specially to spin on the jack, and was the first person who spun on it, and that she commenced to work there as shown by the time-book, Monday, August 23, 1824. That this person was hired for that special purpose is also stated by Arnold Smith, a witness called by the plaintiff to testify in reference to this matter. He was asked on the cross-examination (p. 954), "how long before the machines were set up did Olive Prentice work there?"

Ans. I don't recollect her working till the machine was there, I think Pitts & Buffum hired her to work on those machines.

Hannah Darling (p. 1084), another of the operatives at Pitts & Buffum's mill, states that when she went to work there Olive Prentice was at work spinning, and the time-book shows, that this witness commenced to work on the 18th October, 1824.

Goulding received in exchange and part payment for these machines, a Brewster spinning machine; which was taken from Pitts & Buffum's mill, when the carding machine and jack were left there and delivered at Goulding's mill by the same teamster who carried the carding machine and jack.

The Brewster was set up in Goulding's mill, at Dedham, six weeks before Cooper left.

This fact is testified to by Cooper, and the circumstances connected with it are such as to leave no doubt of the accuracy of his memory upon the subject, (p. 866, int. 8 to 16).

Mr. Pierce also testifies (p. 1039, 1040), that the Brewster was at Goulding's mill while Cooper worked there, and shows by diagrams the situation of it in the mill, and certain peculiarities in the shafting made to adapt it to this machine.

Plaintiff calls Arnold Smith to show that the long roll machinery did not come to the mill until some weeks after Cooper commenced to work there (p. 1275), but it becomes evident from the cross-examination that he has no *reliable* memory upon the subject (p. 953, cross-int. 13).

Indeed, he puts beyond all doubt by his answer to cross-int. 14, p. 1280, in which he says, "I think Pitts & Buffum hired her (Olive Prentice), to work on those machines. I don't recollect her working there till the machines were there." The time-book shows that she commenced to work, August 23, 1824.

He also told Mr. Jones that Cooper came to Pitts & Buffum's mill to *run* the long roll machinery. (p. 1032, 1033.)

Lorinda (Taft) Darling was also called to prove that she saw the Brewster machine at Pitts & Buffum's mill, while she worked there, and she commenced to work there October 25, 1824. (Deposition p. —.)

In this she is mistaken. She undoubtedly saw the Brewster there as she states, but it must have been before she commenced to work at the mill. She had resided within two miles of the mill for some years, and visited the mill before she began to work for Pitts & Buffum.

One fact proves this. She associates Noah Taft as one of the work-

men at the mill at the time she saw the Brewster. (p. 1097, cross-ints. 97, 98, 99.)

Now the time-table shows that Noah Taft did not work at that mill, after July, 1823.

Again, she says, Hannah Tripp now Darling, commenced to work about the time she did. (p. 1097, cross-int. 94.)

Hannah (Tripp) Darling says she never saw the Brewster there. (p. 1085, int. 15.)

Plaintiff also calls Edmund Bacon to prove that the Brewster was at Pitts & Buffum's mill as late as the middle of November, 1824. (p. 1063, direct ex.)

He says he saw the Brewster there when he was in the employment of Pitts & Buffum, in setting up power looms, and fixes the date from the time-book, as November 12, 1824, when he commenced.

But he *must* be mistaken as to the time he saw this machine there.

The Brewster stood, before it was removed from the mill to Goulding's factory, on the very spot where these power looms, or some of them were set up.

Arnold Smith's dep. (p. 1074, cross-int. 7.)
Buffum's dep. (p. 1076, ints. 9, 10.)

He says there were no other power looms there than those he was at work upon when he saw this Brewster. (p. 1063, int. 5).

The name of Wm. Bacon is associated in his mind with the looms he worked upon, as the builder; he thinks his "brother William" built them. (p. 1066, cross-int. 17.)

Now Mr. Buffum testifies that long before Bacon was employed by Pitts & Buffum to set the sixteen looms up, in November, 1824, they had two power looms built by Wm. Bacon, which they tried to operate, without much success, and that Edmund Bacon worked upon these looms, etc. (p. 1075, ints. 2, 3, 4, 5, 9; p. 1079.)

The looms which Edmund Bacon was employed to set up in November 24, were made by another person. Buffum's dep. (p. 1078, cross-int. 24.)

Again, Mr. Bacon had worked in that mill before. (p. 1070, cross-int. 77, et. seq.)

He was intimate with Moses Buffum, had been fellow-apprentices.

He had lived within two miles of the mill for some time, and while an apprentice at Slaterville had heard of the Brewster machine as a curiosity,

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In this she is mistaken. She undoubtedly saw the Brewster there as she states, but it must have been before she commenced to work at the mill. She had resided within two miles of the mill for some years, and visited the mill before she began to work for Pitts & Buffum.

One fact proves this. She associates Noah Taft as one of the work-

men at the mill at the time she saw the Brewster. (p. 1097, cross-ints. 97, 98, 99.)

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He was intimate with Moses Buffum, had been fellow-apprentices.

He had lived within two miles of the mill for some time, and while an apprentice at Slaterville had heard of the Brewster machine as a curiosity,

described by a fellow-workman, B. Gee. (p. 1072, cross-ints. 106–107–108–109,) and had worked there before he went to Pitts and Buffum's mill to work the first time, and while the Brewster was there (cross-int. 110) it was bought by Ezek Pitts, run by him some time before the co-partnership of Pitts & Buffum was formed. (p. 1013, cross-int. 65.)

In 1824 or 1825, Goulding sold a set of long roll machinery to Truman Clark. Dep. Pierce (p. 63, int. 7).

Goulding admits that the sale of this machinery was in 1824 (p. 360, int. 126).

This carding machine sold to Pitts & Buffum, contained the thing patented, not only substantially as patented, but identically the same in its construction as well as operation, as the invention described, and the third claim of the patent (p. 24–25), which is in these words:

"I claim a delivering cylinder of a carding machine in combination with apparatus for drawing off, condensing or twisting and winding carded filaments, the apparatus being substantially such as herein described, whereby carded filaments may be delivered, drawn off, condensed, and wound in a condensed state upon bobbins as herein set forth."

These improvements in the carding machine or finisher are described in the specification on pp. 21–22.

"Each roving or sliver must be passed through a division made in a number of upright wood or metal blocks, affixed upon a rail, and one of which is shown at V. The blocks must be made broader in front next to the rollers than behind as shown in figure 9, which represents the plan of two of them, and the intervals between them must be narrower than the blocks, in the proportion of three to five, or thereabouts, so that each roving or sliver may preserve its proper situation upon the main cylinder and the working cards, without mingling with those next adjacent to it during the operation of carding, and finally be received in its place upon the delivering cards H.

"The two delivering cylinders H. H. being placed one above the other are each furnished with fillets of card, and alternate spaces between them, left unclothed with card in a similar manner to that shown in figure 7, which is a plan of the two delivering cards H. H. etc., and the circular strips or fillets of wire card S. S. around them the fillets on the under delivering card being so placed as to correspond with the spaces left empty upon the uppermost one."

Then follows a method of condensing with tubes which is like the mode of condensing used in the Danforth machine described by Goulding on p. 472, ans. to int. 186.

After being condensed it passed between upright pins or guides and wound upon the bobbin by the action of the drum on which it rested. The guide had a movement forward and back, to lay the rovings side by side on the spool, each within its own proper limits.

"Another method of drawing, forward, condensing and gathering fibrous substance, after carding is seen in an end view at figure 6, where " H is the delivering card cylinder (doffer) *b*. the comb which removes the carded material from the cylinder H, and which is then passed underneath the small, plain roller *c*, which is covered with leather, and under the roller *e*, which is also covered with leather; and to both these rollers *c* and *e* a lateral backward and forward movement is given by the machinery, and which varies in extent according to the coarseness or fineness of the carded sliver or roving."

By comparing the description which Mr. Buffum gives in his direct and cross-examination of the third carding machine or finisher Pitt & Buffum bought of Mr. Goulding in 1824, it will be found that the latter was in all respects in its construction like the machine described in the patent.

Mr. Buffum in answer to cross-int. 50, p. 713, describes the condenser, the delivering cylinder, and the winding apparatus, and the guide with its movement forward and back as follows, " there was an apron of leather which passed round two rollers, on the top of that apron were two rollers one considerably larger than the other, and one or both covered with leather, and lying on the top of the leather apron. The leather apron revolved on the rollers, and the two rollers that lay on top of it vibrated when in motion. Then there was a rack setting up between where this apron revolved and the drum on which the spool lay, made of wires sticking into wood which condensed or contracted the roving as it came from the leather apron which vibrated and conducted the roving on to the spool or spools. If there were two doffers on the cards there were two spools, and if there was not — I think there were two spools, whether there were two doffers or not — but I won't swear whether there were two doffers or two spools, but I think there were two doffers and two spools. The more I think of it the more I think there were two doffers, as the card could not be cleared without two doffers; there must be an upper one and an under one to cover the

whole surface; these doffers are covered with rings of cards. There is a vacancy on one where the ring comes on the other, on the main cylinder."

Now here we have all the elements of the combination of the third claim and in the precise order and arrangement described in the patent.

But it not only conforms to it in this respect but it exactly corresponds with it in all other respects. He says "there were partitions in the part of the machine for keeping each piece of roping (sliver) in its division as it was fed in. These guides were wooden strips and fastened to the front of the machine before the feed rollers (p. 707–708, ans. to int. 9), the partitions were not very wide, I should say about an inch or more, the opening was about the same as the partition. It was sufficiently wide, so you could see the divisions in the wool all the way through the card or the workers. The partitions were champered off instead of being square on the outside."

Here we have also an exact conformity in all the other respects but there is no combination with a kreel (to hold the rovings while being fed into the card) which constitutes the subject of the second claim, and as the kreel was not used by Pitts & Buffum, we do not claim that it embraced that invention.

Two witnesses were called to show that there was but one doffer on this finisher; one of them was William Bacon who was called twice. In his first deposition he testifies that he worked in Pitts & Buffum's mill in 1825 splicing rolls, and that while he knew the machine, it had but one doffer.

He was afterwards called and testified that the doffer was covered all over with card clothing, had no vacant places in it. This witness was mistaken; and his own testimony in the cross-examination in his previous deposition shows it. He said (p. 966), "the lap or strips fed to the finisher were four and one-half inches wide, might have been five; these laps were about an inch in thickness; these strips passed through spaces about two inches wide, the blocks forming these spaces were about one inch thick on the back and were hollowed out to fit the feed-rollers." Now, here we have a sliver five cubic inches, entering a space of two and one-half inches, and separated from the next adjacent sliver of the same size, by a space of one inch only, which, when carded, is reduced to a thickness of less than one-quarter of an inch, as the specimens in this case show, and it would inevitably spread and cover the carding cylinders. Yet this witness would have us believe that these

slivers would not mingle together on the card, but would pass through in divisions, so distant, that a full covered doffer would deliver these carded filaments in strips or slivers separated from each other.

It is impossible from the very nature of the operation. It is incredible in view of what had been indisputably done before in the progress of this improvement. This witness has described exactly the operations on the breakers, and has confused them with those on the finisher.

The other witness was Arnold Smith, seventy-three years old, whose memory evidently is not reliable, as the cross-examination shows. He said there was but one doffer clothed all over, and seeing the difficulty of delivering the carded filament in strips or slivers, he resorted to wider blocks of partition and smaller slivers (which the breakers never produced or could produce,) not sufficient however to show any practicable mode of carding the slivers into roping; the impossibility of rounding by a vibrating condenser strips of carded filaments, five inches wide as these would become in passing through the carding process is not only evident from the nature of the operation, but was the very difficulty which Goulding said he found in his experiments at Halifax, which compelled him to give up (p. 570); he says: "My first experiment at Halifax, was to feed on a card by strips at the feeding table with a doffer covered all over; by that I got out a large sliver running to a box. Those I put up to the billy and made them into roving — they could not make yarn such as I wanted — I could not get the roving *small enough* to be spun without stretching it into the billy."

Is it reasonable to suppose that after this experience and after the invention of the two doffers, which removed all difficulties in making the endless roll so that it could be spun without the billy, Goulding would build for sale, or that any one would be satisfied to buy, a machine for making the endless roll with a single doffer as described by Smith?

But Goulding admits by implication at least that these machines were complete, except "they were fed on to feeders — feeding table — on the second and third machine with a lap." (p. 360, int. 126.)

The difference in the method of feeding forms the subject of the second claim, which is a distinct invention and which is not used on a great many of the carding machines at this day. But even if it had but

a single doffer it would be within this claim. "I claim a *delivering cylinder* of a carding machine, in combination with apparatus for drawing off condensing, etc." Here is no limitation to any particular kind of delivering cylinder.

The jack was in all respects like the jack described and claimed in the patent.

Mr. Buffum, in answer to int. 12, p. 708, says, "It (the jack) was the same in principle; perhaps it was not quite as fine workmanship, but in principle and operation it was the same. It was every way the same with regard to movements, the same thing."

Now although Mr. Buffum is not what counsel would call an expert, because he is not a "mechanical engineer," yet for many years he was an operator in the several branches of the manufacture of wool, and since 1823 has been a manufacturer and owner of all the different kinds of machinery used in that business, a period of upwards of forty years (p. 707). He not only gives his opinion that they were the same in principle, but he says, "the operations and movements were the same, as the jack now in use, the same thing." Now, as to this, he is peculiarly qualified to speak by a long experience as an operator; but he goes further and shows that in its construction it was like the jacks now in use, as in describing its operation he shows that it contained the very devices which distinguished the jack known as the Goulding jack, from all other spinning machines. He says, "the spool was taken when full and placed upon a drum on the jack, and the spools were emptied by turning off the roving as it was spun."

Now the Court can judge whether that jack was the same in principle, without the aid of a "mechanical engineer."

All that distinguished Goulding's spinning machine from those before in use, was the combination of the drum with the spool resting upon and revolved by it to unwind the roving. And this description of the operation of spinning proves its identity with the thing claimed in the patent; it differed only as Mr. Buffum says and shows, in having rollers instead of jaws.

Now Goulding has testified that when he sold this machinery (cards and jacks) to Pitts & Buffum, he expressly told them he intended to

get a patent for them (p. 360, ans. int. 122, 124). If these machines had not contained his invention why did he tell them that?

There is one *fact* which cannot be disputed. This spinning machine was known at the time it was sold by the name of "*Jack*," and it has always been designated by that name and no other. Goulding speaks of it as a jack in referring to the machinery sold to Pitts & Buffum. When this kind of spinning machine was first got up it had no particular name. Mr. Goulding says, (p. 393, ans. to cross-int. 312) "it afterwards assumed the name of a jack, being a machine between the billy and jenney," and gives the reason why it was called a jack; its name, therefore, may be taken as proof of its identity.

The sale of this machinery, cards, and jack was made more than two years before the application for a patent.

The application was made December 8, 1826.

The records of the patent office having been destroyed by fire, no direct testimony existed accessible to us, of the time when the application for this patent was made; the only testimony we could obtain, left to us, is contained in the certificate of the Secretary of State of the facts shown by the Register of letters, received in that Department from the 1st January, 1825, to the 31st December, 1829, by which it would appear that the patent fee, thirty dollars, was received at the Department on the 21st November, and was contained in a letter dated Dedham, November 15, 1826, and that the application with specifications was received on the 13th December, 1826, inclosed in a letter dated Dedham, December 8, 1826.

By the act of 1793, under which the application for this patent was made (chap. II, sect. 2), it was provided, that "every inventor, before he presents his petition to the Secretary of State, signifying his desire to obtain a patent, shall pay into the treasury thirty dollars, for which he shall take duplicate receipts," etc. Now it is made manifest by the registry of letters in the State Department, that this petition could not have been presented before the 21st November, 1826.

Unfortunately for us, all the records and files of the Treasury Department relating to transactions with that office prior to that time were destroyed by fire in 1833.

Mr. Goulding received a receipt for the payment of this money; and

it is in his power, either by the production of that receipt, or by other means we submit within his control, to fix the time when this application was made.

Under the act of 1793, patents were granted upon the application, of the alleged inventor as of course, and without any previous examination, and without delay; in the case of Lowder & Whiting's patent the application was made on the 24th June, 1824, as the U. S. Treasurer's receipt for the patent fee shows. (p. 865, Exhibit W.) The patent bears date the following day, June 25, 1824. In the absence of proof of an earlier date, the date of the patent should be taken as the date of the application, especially under the circumstances of this case.

We have thus shown a sale of the thing patented, not only substantially, but identically as patented, more than two years before the application for letters patent; and this works a forfeiture of the patent for the inventions described in the third and fourth claims, as an abandonment to the public.

It also invalidates the patent in toto. Under the patent acts of 1793 and 1836, if a patent was void in part, it was void in toto; and it is not saved by the statute giving the plaintiff the right to recover, if a part of the invention claimed is new, and can be distinguished from that claimed without right.

This is true where the part claimed was claimed *bona fide*, under the belief by the patentee that he was the first inventor. (See Stat. Act, 1837, chap. 45, sec. 9.)

But it does not apply to the case of an attempt to reclaim that which had been once abandoned to the public.

This statute was intended to relieve such inventors only, leaving the law unaltered as to the effect of claiming that which he was not entitled to, for other reasons.

III.

III. That the re-isssued patent, June 28, 1864, is void, because it is not in conformity with the Act of Congress authorizing the extension.

The Act of Congress for the relief of John Goulding (p. 512) authorized the commissioner of patents to grant the extension of the patent or withhold it, the same as if the application had been seasonably made, "provided that such renewal and extension shall not have the effect, or be construed to restrain persons who may be using the machinery invented by said Goulding at the time of the renewal and extension hereby authorized from continuing the use of the same; nor to subject them to any claim or damage for having used the same."

Here is an express limitation of the authority vested in the Commissioner. The grant is to be limited, "so that it shall not be construed" to vest in the patentee, any right to restrain persons who may be using the machinery at the time of the extension, etc.

This limitation should appear in the grant, and it was so intended by Congress.

It is not only provided that the extension shall not have the effect to restrain persons, etc., but further, it "shall not be so *construed*." Now if it had not been intended to qualify this grant by appropriate words of limitation, why were the words "shall not be so construed" added?

By the Act of 1836, chap. 357, sec. 18, in the cases mentioned, it is provided that it "shall be the duty of the Commissioner to renew and extend the patent, by *making a certificate* thereon of such extension," etc. Now to construe is "to discover or express the meaning by the right arrangement of the words of a sentence." This certificate was the subject to be construed, and the Commissioner of Patents very properly indorsed upon the patent of 1826, as reissued July 29, 1836, the extension, "subject to the proviso of the Act of Congress," aforesaid, by which the extent of the rights granted to Goulding was qualified and limited, and the rights of persons therein provided for were protected. (p. 513.)

But the plaintiff, the assignee of Mr. Goulding not being satisfied with the patent subject to qualification or limitation "presented a petition" (in the language of the patent) "signifying a desire of obtain-

ing an *exclusive* property in the said improvement and praying that a patent may be granted for that purpose," and it was done accordingly. (p. 18.)

And no protection whatever is afforded thereby to an extensive interest, and a numerous class whom it was the intention of Congress to exempt from its operation.

It is respectfully submitted that it is no answer to say they have the protection of the act. It was never intended to make it incumbent upon them to appeal for protection to the Courts.

This is a private statute; no one entitled to the benefit of the proviso would ever learn it from any suggestion contained in this patent.

Again, it is recited on the face of the patent that the original "letters patent were issued to John Goulding, December 15, 1826, which letters, having been surrendered, the same were cancelled and new letters ordered to issue to him July 29, 1836, which last letters were extended for the term of seven years from and after August 30, 1862."

That is, it appears upon the face of this patent that it was extended nearly twenty years after the expiration of the term for which it was originally issued.

Now by the 19th section of the Act of 1835, aforesaid, it is provided "that no extension of a patent (by the Commissioner) shall be granted after the expiration of the term for which it was originally issued." *Prima facie,* therefore, this patent is void, and it is only by invoking the statute that it can be saved. Now that being a private statute, it should be incorporated with and accompany the exercise of the authority claimed under and by virtue of it.

There are several other grounds of defence set out in the answer one of which is that the suit ought not to be maintained in equity because the plaintiff has a plain, adequate and complete remedy at law, and unless all distinction between jurisdiction in matters of equity and of law in cases arising under the patent laws is to be considered abolished by the sanction of a few years' practice, that defence is maintainable in this case.

The act to establish the judicial courts of the United States, chap. 20, 1789, sec. 16, provides that "suits in Equity, shall not be sustained in either of the Courts of the United States, in any case where plain, adequate and

complete remedy may be had at law." (Little & Brown's edition U. S. Laws, vol. 1, p. 82.)

The injury to the plaintiff by the use of the invention consisted not in the using of it by the defendant, but in using it without paying compensation therefor, that is, without paying the fixed license fee established as the price for the use of the invention, to be paid by all who desire to use it. A certain sum as the established fee was demanded of the defendant, a bill was presented, after the machinery had been in use some time with the knowledge of the plaintiff, and this suit was brought to compel the payment of that fee. A. G. Greeley, defendant's treasurer, (p. 118), says: "Mr. Clark, the treasurer of the owners of the Goulding patent called on me and demanded payment for the use of the woollen machinery referred to in the bill, and stated, that the claim against our corporation was seven hundred and fifty dollars, and gave me a slip of paper, on which he wrote a memorandum of the amount; which paper is filed on an affidavit in this case, made by me. I saw him several times. At one interview I offered to deposit the amount claimed, provided they would give me a bond to refund the amount in case the patent was not sustained. He declined to accept that proposition."

"He also stated, that the amount claimed of us was the rate of claim against other parties, that the rate of tariff or royalty established was two hundred and fifty dollars for a set of cards and a jack. The memo. he gave, now on file, will give the details."

If the suit can be sustained however in Equity, the decree should be for the amount of license for, and not for the amount of profits.

"Where an inventor has found it profitable to exercise his monopoly by selling licenses, he has himself fixed the average of his actual damage, and the price of such license may afford a proper measure of damages.

"It is only where, from the peculiar circumstances of the case, no other rule can be found, that the defendants' profits become the criterion of the plaintiff's loss." *Seymour* vs. *McCormick*, 16 Howard, 488.

See list licenses, p. 602 to 613.

JAMES B. ROBB,

Of Counsel with Defendant.

Supreme Court of the United States.

DECEMBER TERM, 1868.

IN EQUITY.

AGAWAM WOOLEN COMPANY,

APPELLANTS,

vs.

EBEN D. JORDAN,

APPELLEE.

BRIEF ON BEHALF OF APPELLEE.

(The references are to the old paging, viz: To the side paging of the record.)

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Supreme Court of the United States.

IN EQUITY.

AGAWAM WOOLEN COMPANY,

APPELLANTS,

vs.

EBEN D. JORDAN,

APPELLEE.

BRIEF ON BEHALF OF APPELLEE.

(The references are to the old paging, viz: to the side paging of the record.)

This is a Bill in Equity for the infringement by defendants of letters patent owned by the appellee, being for a new and useful improvement in machinery for the manufacture of wool and other fibrous material.

The bill was filed September 24, 1864.

The patent was granted December 15, 1826, to John Goulding; reissued July 29, 1836; extended seven years, from August 30, 1862, under a special Act of Congress; and, having become vested in appellee, was reissued to him, June 28, 1864.

The original patent was destroyed by fire after its surrender, in the conflagration that destroyed the Patent Office, but it is set forth in the declaration in the case of Goulding *vs.* Ichabod Washburn and Benj. Goddard, which was a suit commenced in March, 1829.

Exhibit G., p. 272, and pp. 277 to 284.

A copy of the reissue of July 29, 1836, may be found on pp. 673 to 681; and the reissue of June 28, 1864, on pp. 25 to 34, inclusive.

PLEADINGS — BILL.

The bill sets forth, among other things, that Goulding was the original and first inventor; also the grant of the original letters patent to him;

the surrender of the same, and the reasons therefor; and the grant of the reissue of 1836; the special Act of Congress, of May 30, 1862, authorizing an extension; the extension of the patent by the Commissioner in pursuance of this act; the assignments by which the title became vested in the appellee; the recovery of a verdict against Nathan A. Lombard, in this district, at the October Term, 1863, and the payment of the damages and costs; a surrender of the reissue of 1836, and the reasons therefor; and the grant to the appellee of the reissue of June 28, 1864; an acquiescence of a large number of persons, — both those making as well as those using the machinery, in the validity of the patent; the grant of licenses to them, and the payment of royalty by them; the great utility of the invention, and the universality of its use.

The bill also contains the usual allegation of infringement by the appellant corporation.

PLEADINGS — ANSWER.

The answer contains:

1. An allegation that the improvements described in the patent were "invented and applied by one Edward Winslow, then of Dedham, from whom said Goulding first obtained knowledge of the same, and fraudulently and surreptitiously obtained a patent on the 15th day of December, as aforesaid, for that which he well knew was the invention of said Winslow at and before the application by him for a patent, as set forth in said bill." — Answer, pp. 15, 16.

2. A denial that Goulding was authorized by the Act of Congress to apply to the Commissioner for an extension of the patent. — Answer, p. 16.

3. An allegation that the Act of Congress and extension were procured by fraud. — Answer, p. 16.

4. A denial that Congress had power to pass the bill for Goulding's relief, and an allegation that the acts of the Commissioner thereunder are void. — Answer, p. 17.

5. A denial that the reissue of June 28, 1864, was for the same invention as that intended to be secured by the patent surrendered, and denial that the surrender was because of any error which arose by

accident or mistake and without any fraudulent design, and an allegation that the same was surrendered fraudulently to enable the appellee to cover and secure alleged inventions in other patents granted to Goulding, and the appellants name as such patents:

One of August 24, 1827;

One of February 16, 1829;

One of July 21, 1829, and others not specified. — Answer, p. 19.

6. A denial that the Commissioner had any lawful authority to grant the reissue of June 28, 1864. — Answer, p. 20.

7. An allegation that Goulding was not the first and original inventor, but that the same were, long before Goulding's invention thereof, known by Aza Arnold, Samuel Greene and Waterman Dexter, and others unknown. — Answer, p. 20.

8. An allegation that the said invention claimed by Goulding, and material and essential parts thereof are described in certain British patents, viz.:

One to Lewis Paul, granted June 29, 1758.
" " Richard Arkwright, granted Dec. 16, 1775.
" " John Royds, granted Oct. 18, 1786.
" " James White, granted July 11, 1820.
" " Archibald Buchanan, granted Dec. 4, 1823.
" " Jno. Geo. Bodmer, granted Oct. 14, 1824.
" " Joseph C. Dyer, granted July 16, 1825. — Answer, p. 20.

9. An allegation that at the time of the application of Mr. Goulding for a patent, the invention was and had been for a long time on sale and in public use with Goulding's consent and allowance, and

10. That he abandoned the same to the public. — Answer, p. 20.

11. The answer does not deny the allegation of infringement if the patent be valid. The answer on this point merely denying that the appellants infringe any *rights* of appellee.

NATURE AND IMPORTANCE OF THE INVENTION. — OLD PROCESS.

This invention of Mr. Goulding worked an entire revolution in the manufacture of woolens, both in this country and in Europe. The

process before in use in the production of yarn from wool, was by a set of carding engines, — a billy and a jenny, — a set usually consisting of three carding machines, commonly called a first breaker, a second breaker, and a finisher, one billy and two jennies, sometimes two double carding machines being used instead of three single carding machines.

The wool was fed to the first carding machine, called the first breaker, on a feed table, and was doffed off the doffer of that machine by a comb. The material thus doffed off was taken to the second carding machine, called the second breaker, and was fed into it in the same manner as in the first, and upon leaving the doffer, was either wound round a large cylinder, making what was called a lap or bat, or dropped on the floor. The material was then taken to the third carding machine, and was fed to it in the same way, and, by a roller and shell at the delivery end of this machine, was made into short rolls, which were about as long as this machine was wide. These short rolls were then taken to the billy, and were spliced together on the apron roll of the billy by children, by rubbing the rolls together with the backs of their hands, and were carried forward on the billy, after being so spliced together, by the apron roll, which fed them through the jaws of the billy to the spindles. The product of the billy was called roving. This roving was then taken from the billy and set up on cops to the jenny, upon which it was spun into yarn.

Exhibits 22, 23, 24, 25, ans. of Thomas Musgrave to ints. 38, 39, pp. 414, 415, and to ints. 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 18, 22, 23, 32, 33, pp. 409, 410, 412, 413, 414.

John Eddy's deposition, ints. 1, 2, 3, 5, 6, 7, 8, 10, 11, 12, 18, 22, and ans., pp. 388, 389, 390, 391, 392, 393, inclusive.

Jesse Eddy's deposition, ints. and ans. 3, 4, 5, 6, 7, 11, 12, 13, 14, 15, 20, 21, 22, 25, pp. 379 to 382, inclusive.

Miles Sprague's deposition, ints. and ans. 7, 11, 14, pp. 421, 422.

The purpose of Mr. Goulding was to invent machinery which would produce yarn from wool in a cheaper manner, of better quality, and in greater quantity than was produced by the old process. He aimed at dispensing with the billy entirely, and accomplishing with four

machines that which had previously required the use of five machines. His purpose was also to dispense with short rolls entirely, and get the perpetual or endless roll, and carry it through its different stages from the crude wool until it became finally converted into yarn.

Goulding's deposition, ans. to int. 13, p. 459.

The result of his experiments and trials, extending over a long period of time, and after the use by him of very many devices, was completely successful. He dispensed with the billy entirely, and by his new processes obtained a continuous, endless roll, capable of being practically worked, and of immense utility.

ITS RAPID INTRODUCTION AND GREAT UTILITY.

His invention went into rapid use, and from that time to the present has not been improved, but is to-day what it was then.

No improvement has been made upon it from the time it was patented to the present time. Every woolen factory in the country and Europe uses it, and it is absolutely indispensable. Immmediately upon its introduction it superseded the short roll process, and probably no invention in the woolen manufacture can be referred to, which so advanced and stimulated that branch of industry, as this invention.

He dispensed entirely with the use of the billy; he obtained a continuous or perpetual roll as the product of each carding engine; he accomplished a successful mixing of the wool,— as well where the same color was used, as where different colors were used. He dispensed with a large amount of manual labor, secured a larger product at half the expense as compared with the old process, a better and more uniform roving, and a better and more uniform quality of yarn.

Deposition of Jesse Eddy, ints. and ans. 1, 3, 4, 5, 6, 20 to 31 inclusive, 38, 39, 40, 7, 8, 9, 10, 11, 12, 13, 14, 15, 42, pp. 379, 380, 381, 382, 383, 384; p. 386.

Deposition of John Eddy, ints. and ans. 1 to 8 inclusive, 29 to 38 inclusive, 45 to 48 inclusive, 9 and 10, pp. 388, 389, 395, 396, 397, 398, 399, 400, 401.

Deposition of Chas. Trafton, ints. and ans. 1, 2, 3, 4, 5, pp. 377, 378.

Deposition of Thomas Musgrave, ints. and ans. 1 to 13 inclusive, 18–20 to 37 inclusive; cross-ints. and ans. 3 and 4; pp. 409, 410, 412, 413, 414, 415.

Deposition of Miles Sprague, ints. and ans. 1 to 16 inclusive, pp. 420, 421, 422.

Deposition of Truman Clark, int. 29 and ans., p. 881, 882; cross-int. 56; and ans. p. 888.

Petition of Edward Winslow to Congress, in favor of Goulding, Exhibit 27, p. 647.

Deposition of John Goulding, ints. and ans. 114, 115, 116, 117, 118, p. 482.

Letter of Ichabod Washburn, p. 705.

Letter of Charles I. DuPont, p. 707, also his affidavit, p. 721.

Report of Committee on Patents, p. 701.

Affidavit of Thomas Barrows, p. 723.

The Commissioner's decision extending patent, pp. 727, 728.

The petition of Goulding to the Commissioner of Patents, praying an extension, and the decision of the Commissioner were put in evidence by the appellants though objected to by appellee.

p. 309, and Exhibits X, Y, p. 309 to 314 inclusive.

These being only a part of the proceedings before the Commissioner of Patents, upon the question of the extension of the patent, the appellee put in evidence *de bene esse* the whole proceedings before the Commissioner, among which proceedings are the letters of Ichabod Washburn, and Dupont and his affidavit, and the report of the Committee and affidavit of Barrows.

THE INVENTION WENT INTO UNIVERSAL USE AND IS NOW IN UNIVERSAL USE.

The invention of Mr. Goulding went into universal use and is now in universal use. This is proved by the concurrent testimony of both appellee's and appellants' witnesses.

John Goulding's deposition, int. 131 and ans., p. 484.

Charles Trafton's deposition, int. 6 and ans.; cross 1 and ans.; int. 1 and ans., pp. 377, 378.

Jesse Eddy's deposition, int. and ans. 1, 5, 20, pp. 379, 381; int. and ans. 32, 33, 34, p. 383.

John Eddy's deposition, ints. and ans. 1, 2, 3, 5, pp. 388, 389; ints. and ans. 29, 30, 41, 42, 43, pp. 395, 399 and 400.

George Sabin's deposition, cross-int. 5, p. 140.

Mr. Goulding, in his specification, refers as well to the roller jacks as jaw jacks. He says "instead of jaws, grooved or channelled rollers may be employed for a similar purpose." — Reissue, p. 33.

And the witnesses testify that the rubber condensers which are referred to by Mr. John Eddy are substantially the same as set forth by Mr. Goulding in his patent.

Wm. C. Hibbard's deposition, ints. and ans. 47 and 48, p. 917.

Edward S. Renwick's deposition, ints. and ans. 45 and 46, pp. 901 and 902.

Deposition of Thomas Musgrave, ints. and ans. 14 and 15, p. 411; also cross-int. 25, p. 418, 1 to 7 inclusive, p. 409.

Deposition of Miles Sprague, ints. and ans. 17, 18, 19, p. 422; ints. and ans. 1, 2, 3, p. 420.

Deposition of George L. Davis, ints. and ans. 1 to 16 inclusive, pp. 315, 316, 317.

Deposition of Foster Nowell, ints. and ans. 1 to 9 inclusive, pp. 318, 319.

The report of Committee on Patents to Congress, before alluded to states that it "is now in constant and universal use by manufacturers"; p. 701.

Ichabod Washburn, in his letter of Feb. 17, 1862, before referred to, says, "It it my opinion it is universally used and has been for many years"; p. 706.

Charles I. Dupont, in his letter before alluded to of Feb. 17, 1862, says, "His condensing cards and side drawings are now as indispensable as the revolving shears or power loom"; p. 707; also his affidavit, p. 721.

Thomas Barrows, in his affidavit before alluded to, says, "As soon as

Mr. Goulding's improvements were made public, they were seized and used by manufacturers generally," p. 724.

The list of licenses put in evidence by appellants' counsel, showing what royalty has been paid since the extension, shows the universality of the use of this invention, viz: the royalty on

1314 Jacks or Mules,
797 First Breakers,
766 Second Cards,
872 Third Cards or Finishers,

has been paid since July, 1863.

Geo. D. Clark's deposition, cross-int. and ans. 1, p. 796; Exhibit D[1], pp. 800 to 811 inclusive; int. and ans. 31, p. 795.

This list, it will be observed, shows on what machinery embodying Goulding's invention, built after August 30, 1862, (the date of the extension) the royalty has been paid. How much has been built since that date on which no royalty has been paid, it is impossible to state.

Mr. Clark also refers to the license granted to Nathan A. Lombard, and states, also, what other makers of machinery have taken licenses.

Geo. D. Clark's deposition, ints. and ans. 21, 23, pp. 785, 786; Exhibit 32, p. 796.

Deposition of Henry Goulding, defts.' witness, cross-ints. and ans. 17, 18, p. 131. [This witness was a maker of the machinery, p. 124.]

Deposition of Geo. Sabin, defts.' witness, cross-int. and ans. 5, p. 140. [This witness was a maker of the machinery, p. 138.]

If it be pretended that Whiting & Lowder accomplished anything towards dispensing with the old machinery, the answer is that their machine was not like Mr. Goulding's; that it was a failure and worthless, and abandoned as such; and that it was no improvement whatever upon the old process; and that Goulding was the first person who made

machinery that could produce a continuous roll which could be practically converted into yarn, and dispense with the old process.

Deposition of John Goulding, ints. and ans. 104 to 108, inclusive, pp. 480, 481; 76 to 80, inclusive, pp. 476, 477; cross 406 to 410, p. 535; cross 415, 416, 423, p. 536; cross 450 to 454, p. 540; cross 444, 445, p. 539; Exhibit 30, p. 649.

Deposition of Truman Clark, ints. and ans. 30 to 37, inclusive, p. 882; 1, 2, 3, 4, 5, 6, p. 879.

Deposition of Isaac C. Bosworth (defts.' witness), ints. and ans. 6, 7, p. 1153; cross 2, 11, 12, 13, 14, pp. 1153, 1154, 1155.

Even John D. Cooper (defts.' witness) admits it was a failure, p. 93.

This Whiting & Lowder machine was a single machine, and the sliver from it ran into cans.

Deposition of John Goulding, int. and ans. 178, p. 629.

No mention of or reference to this machine is made in any way in the answer.

The Stillman machine, which was not like Goulding's, was no improvement on the short roll process, and was a failure, and abandoned as such.

Deposition of Thomas Musgrave, cross-ints. and ans. 19 to 23 inclusive, pp. 417, 418; direct 44 to 46 inclusive, p. 419; cross 32 and 33, p. 420.

There is no evidence when this Stillman machine was invented, whether before Goulding's or not. All Musgrave says on this point is, that he has an impression it was between 1824 and 1826.

Cross and ans. 20, 21, p. 417.

No mention of or reference to this machine is made in the answer, and no description of it is anywhere given in the testimony, and its construction does not in any way appear.

Mr. Goulding having thus made this great invention, which entirely revolutionized the manufacture of woolens, obtained a patent Dec. 15, 1826, which was re-issued July 29, 1836, pp. 673 to 681.

He surrendered to be cancelled the letters patent of Dec. 15, 1826,

April 27, 1827, July 10, 1827, Aug. 24, 1827, Feb. 16, 1829, July 21, 1829, the descriptive parts of which patents so surrendered were all alike. See agreement, p. 284.

Deposition of John Goulding, int. and ans. 130, p. 484.

Mr. Goulding in these different patents which were surrendered when the reissue of July 29, 1836, was granted, claimed different parts in the claiming part of the patents; the descriptive part in all being exactly alike.

GOULDING'S FAILURE TO GET AN EXTENSION OF PATENT WHEN IT EXPIRED. HIS EFFORTS AND APPLICATIONS TO CONGRESS.

Mr. Goulding failed, through erroneous information given him by the then Commissioner of Patents, to obtain an extension of his patent.

Pages 686, 687, 688, 689, 690, 691, 696, 697, 698, 701.

The Commissioner of Patents informed Mr. Goulding's Agent, Isaac Thayer, by letter, dated June 22, 1840, that an application for a renewal might be made at any time before the patent expired. This was in reply to a letter of Mr. Thayer to the Commissioner, dated June 20, 1840, asking when the application must be made.

Pages 687, 688, 689, 690, 691.

Acting upon the information given by the Commissioner, the application was not made until it was too late to give, before the patent expired, the notices required by law.

An Act passed the House of Representatives in 1848, in favor of Mr. Goulding, but it was defeated in the Senate.

Goulding's deposition, int. and ans. 119, p. 482.

Finally, on May 30, 1862, an Act was passed authorizing the Commissioner to extend the patent.

Page 722.

Vol. Laws of U. S., 37 Congress, session 2, chap. 88.

Then, at the age of seventy years, after Mr. Goulding had struggled against poverty for many years, and had seen his invention pirated throughout the country without any pecuniary ability on his part to vindicate his rights, and had seen and watched woolen manufacturing in this country, in its various stages, from its infancy to its present gigantic proportions, believing and knowing that his inventive genius had mainly contributed to its success, he at last obtains that long-deferred act of justice, an extension of his patent by virtue of this Act of Congress, the passage of which he had been struggling many years to obtain.

Congress having thus passed this enabling Act, the Commissioner, after due notice, determined, upon the proofs before him, that the patent ought to be extended, and extended it accordingly for seven years.

Pages 682, 683.

Also Exhibit 36, pp. 673 to 681, inclusive.

TITLE.

The title to the Patent after its extension became vested in the appellee by the following assignments, viz.:

John Goulding assigned the whole to Alfred Goulding, Aug, 30, 1862.— pp. 37, 38.

Alfred Goulding, by power of attorney gave John Goulding full power to sell and convey.— Exhibit 8, p. 35.

Alfred Goulding, by his said attorney, April 13, 1863, conveyed three-tenths of said patent to the appellee.— p. 38.

Alfred Goulding conveyed the residue to John Goulding, June 27, 1863.— pp. 41 and 42.

John Goulding conveyed same to the appellee July 9, 1863.— pp. 39, 40, 41.

So that the whole title became vested in the appellee July 9, 1863. The appellee obtained the reissue June 28, 1864.— Exhibit, pp. 25 to 34.

John Goulding's deposition, int. 169, p. 491, cross-int. 1034, p. 624.

MODELS.

The models produced, marked 1, 2, 3, 4 and 5 respectively, are correct models of the patented invention, and this is nowhere denied by any of appellants' witnesses.

Deposition of Wm. C. Hibbard, int. and ans. 15, p. 57.
Deposition of Edward S. Renwick, int. and ans. 12, p. 65.

This brings us to the consideration of the next question which is the question of infringement, and we think this will not be seriously controverted by appellants.

INFRINGEMENT.

It should be observed here that the reissue of 1864 is dated June 28, 1864, and we must confine ourselves to a user of the machinery or a manufacture or sale of it by the appellants, after that date.

We claim that the appellants used continuously after that date three new sets of carding machines and six new jacks, each set of carding machines embracing one first breaker, one second breaker and one finisher, each of which machines, including the jacks, we claim to be an infringement of the patent.

It is also clear that the use of neither one of said carding machines or jacks is protected by the proviso in the Act of Congress authorizing the extension of the patent.

That proviso is as follows: "Provided that such renewal and extension shall not have the effect or be construed to restrain persons who may be using the machinery invented by said Goulding at the time of the renewal and extension hereby authorized for continuing the use of the same, nor to subject them to any claim or damage for having so used the same," p. 681.

p. 722, cited ante.

The patent was extended Aug. 30, 1862—pp. 25, and 682 and 683.

The appellant corporation was not organized as a corporation until April 1, 1863—Exhibit 10, pp. 42 and 43.

Deposition of Andrew G. Greeley, ints. and ans. 1, 2, 3; p. 46.

These three sets of carding machines and six jacks, were not built until some time after the patent was extended.

Affidavit of Daniel Tainter, p. 44.

Affidavit of Rodney A. M. Johnson, p. 45. (See agreement that the attendance of these two witnesses should be dispensed with and their affidavits used as evidence p. 43.)

Deposition of Joseph S. Potter, ints. and ans. 1, 2, 3, 4, 5, 6, 7, 8; pp. 48, 49.

Deposition of James E. Pinkham, pp. 52 and 53.

These cards and jacks have been in operation by appellants more or less every day since they were received by appellants.

Deposition of James E. Pinkham, ints. and ans. 5, 8, 9 and 2; pp. 52, 53.

Deposition of J. S. Potter, ints. and ans. 8, 9; p. 49.

July 27, 1864, Edward S. Renwick was at the appellants' factory, and all of the carding machines and two of the jacks complained of were then in operation.

Deposition of Edward S. Renwick, int. and ans. 4, 7, pp. 59, 60.

It is then clear that these three new sets of carding machines and six jacks were all built after Aug. 30, 1862, and were all used after the reissue of June 28, 1864, was granted, and before the bill was filed in this case, which was Sept. 24, 1864. (p. 14.)

The only possible question which can arise on the deposition of J. S. Potter, is as to the time when the earliest of the six jacks was built, and that is put at rest by the testimony of R. M. A. Johnson, who says he built it after Sept. 1, 1862, and that it was sent by him to the factory at Hamilton, as soon as done, which was in Dec., 1862.

The answer does not deny the infringement.

Specific interrogatories in reference to the question of infringement are contained in bill, pp. 12 and 13.

The appellants do not answer these interrogatories but evade them, and do not deny *that they are using and have used the invention claimed in he patent*, but only deny the use of any machinery "*in violation*

and infringement of any rights of the plaintiff, or that they are using or have made or sold or used any machines not protected or covered by the proviso in the Act of Congress for the relief of John Goulding," p. 22.

The answer further contains this language, "And this defendant prays judgment of this Honorable Court, whether it shall make any other or further answer to said bill than it has already hereinbefore mentioned and set forth," — p. 22. Clearly showing that the appellants could not deny that they were infringing the invention claimed in the patent.

The issue of infringement is fully proved. The appellants knew that such machinery would be an infringement when they got the first bill of the machinery, June 12, 1863, and before any of the machinery was delivered.

Deposition of J. S. Potter, int. and ans. 12, pp. 50 and 51; Exhibit 7, p. 51; also ints. and ans. 5, 6, p. 49.

Exhibit 7, p. 51.

Deposition of Wm. C. Hibbard, ints. and ans. 1 to 16, inclusive, pp. 53, 54, 55, 56, 57 and 58, and Exhibit 6, p. 58.

Deposition of Edward S. Renwick, pp. 58 to 66, inclusive.

The bill of the earliest machines which they bought stated on its face that they were "Subject to John Goulding's Patent, — will send a bond, for you to sign."

The only testimony adduced on behalf of appellants on this subject is that of Thomas D. Stetson, and it relates only to parts on the finishers, and not to the first or second breaker or jack; and this witness nowhere denies the infringement, even on the finisher.

The appellants' counsel studiously avoided asking him that question.

The only interrogatories put by appellants to Mr. Stetson, even remotely touching this question, are

Ints. 28 and 29, pp. 293 and 294.

His testimony simply amounts to this upon this branch of the case, viz., that in his opinion, to use his own language, "There is no such space between the fibres to keep the rovings of uniform size when they are delivered, as is described in the reissue."

Ans. to int. 28, p. 293.

Mr. Stetson also says, in his 28th answer, p. 293, that the rovings are not kept separate, as is described in the patent of Mr. Goulding, but are worked together.

In his 29th answer, p. 294, speaking of the appellants' finisher, he says, "The same fibres *which formed each original roving, or an equal quantity*, after they have been thus carded together, is separated by the modification of the belts or rings which I have described on the doffers."

It thus appears that he is in doubt whether the same fibres which formed the original roving come out separately at the delivery end of the machine, or an equal quantity. If the same fibres which formed the original roving, or an equal quantity, come out separately, their substantial identity and separation are necessarily maintained. Mr. Stetson will not state that the same fibres which formed the original rovings do not come out of the card separately, but admits they may.

The specification in the patent on this subject is this: "In the third carding operation the strands are fed to the card, and conducted so as to cause the sliver slubbing or roving to be even and of a uniform size when taken from the delivering card, being carried through and delivered from the cards separately from each other, by means of the blocks v v," p. 29.

"The blocks must be made broader in front next to the rollers than behind as shown at figure 9, which represents the plan of two of them and the intervals between them must be narrower than the blocks in the proportion of 3 to 5, or thereabouts, so that each roving or sliver may preserve its proper situation upon the main cylinder and the working cards without mingling with those next adjacent to it during the operation of carding, and finally be received in its place upon the delivering cards H," — p. 30.

Mr. Hibbard and Mr. Renwick both say that on a finisher like appellants' there is a separation of slivers as they are being carded on main cylinder.

Deposition of Hibbard, int. 32 and ans., p. 914.
Deposition of Renwick, int. 28 and ans., p. 897, 898.

But what was a vague and unsettled opinion or theory on the part of Mr. Stetson is entirely set at rest by the testimony of both Mr. Renwick

and Mr. Hibbard, who have actually and carefully tried the experiment, showing that the guide-pins or blocks on the appellants' finishers, as on Goulding's, preserve the substantial separation and identity of each sliver on the finisher, and that this is not done by the size of the rings on appellants' finishers, as stated by Mr. Stetson.

Edward S. Renwick's deposition, ints. and ans. 18 to 29, inclusive, p. 895 to 898.

Wm. C. Hibbard's deposition, ints. and ans. 23 to 34, inclusive, pp. 912 to 915, inclusive.

These practical experiments showing conclusively that on finishers fed just like appellants', with blocks or guide-pins of the same size, with ring-doffers, just like appellants', the fillets of card and spaces on them just like appellants', a substantial separation and identity of each sliver is preserved on the machine, that this is done by means of the blocks or guide-pins, and not by having the rings on the upper doffer narrower than the rings on the lower doffer, or the spaces on the upper doffer wider than those on the lower doffer. We have seen by these experiments that when the witnesses omitted to feed in the slivers between any two of the guides or blocks, then that as soon as the wool previously fed into the machine became discharged from the main cylinder, the sliver broke down, and failed entirely, which would not have been the case if Mr. Stetson's theory was correct; viz, that the guide-pins did not preserve the separation, but the rings on the doffers did. The more clearly is the proof shown by this experiment when wool of different colors was used. No evidence in opposition to this has been introduced by appellants, and it stands unimpaired, and is clearly conclusive.

Mr. Stetson admits that the mechanism for guiding the slivers into the appellants' finishers are like the patentee's. — Cross-ints. and answers 30 and 31, p. 303.

He thus admits that they are wedge-like or rounded on the side on which the rovings are received, and are square on the other side towards the feed rollers. The blocks described by the patentee are wedge-like, the smaller part being on the side on which the rovings are received, and the larger on the other side next to the feed rollers.

Mr. Stetson admits that the function performed by the guides or blocks

in the appellants' finisher is the same performed by those in Goulding's finisher. — Int. and ans. cross 42, 43, 44, p. 306; also cross 48 and 49, p. 307.

He also admits that it would be impossible to make uniform rovings on appellants' finishers without them, and that rovings made without them would be practically so irregular as not to be used.— Cross-ints. and ans. 46, 47, pp. 306, 307.

He also admits that the sheet of wool on the main cylinder of appellants' finisher is a little thinner along the lines opposite the teeth (i. e. blocks) which guide the rovings. — Ans. to cross 39, p. 305.

So much for the guide pins which Mr. Stetson admits are constructed and used like the patentee's, and perform the same function.

Now as to the rings on the doffers of the appellants' finishers.

Mr. Stetson says the width of the spaces on the upper doffer of the finishers of appellants was wider than the rings of card fillet on the same doffers; that the spaces were an inch and an eighth, and the fillets seven-eighths, or something like that, and that he thinks the width of spaces on the lower doffers was the same width as the fillet on those doffers; that the spaces and fillets on the lower doffers were each an inch, or about that; that such quantities are a little irregular; that the card clothing is not made strictly and absolutely uniform; and that the edges of fillet get a little battered with use.

Cross-ints. and ans. 32, 33, p. 303.

The appellants' finishers then, it is conceded, had also ring doffers, — So has the patentee's. The patentee says, in his specification, "The two delivering cylinders, H H, being placed one above the other, are each furnished with fillets of card, and alternate spaces between them left unclothed with card, in a similar manner to that shown in figure 7, which is a plan of the two delivering cards, H H, &c.; and the circular strips or fillets of wire card, S S, around them,— the fillets on the under delivering card being so placed as to correspond with the spaces left empty upon the uppermost one."

Reissue, p. 30.

It is conceded by Mr. Stetson that the patentee nowhere says that the rings on each doffer must be of the same width.

Cross 45 and ans., p. 306.

Then there can be no pretence that the ring doffers of appellants' finishers are not the same, substantially, as set forth by the patentee, viz: Rings and alternate spaces on each doffer, and where there is a ring on one doffer there is a space on the opposite doffer.

It is shown by Trueman Clark, that in 1828, the ring doffers which Mr. Goulding made for him had wider rings of card on the lower doffer than on the upper.

Ints. and ans. 15, 16, 17, 18, 19, 20, 27, pp. 880, 881.

Mr. Goulding, in stating the experiments he made before perfecting his machinery, says, "Sometimes I make the lower rings a trifle wider, from a one-sixteenth to an eighth of an inch, depending upon the coarseness of the wool, or quality of the wool to be worked."

John Goulding's deposition, p. 464.

Mr. Stetson then admits that the guides or blocks on the appellants' finishers were like Goulding's, wedge-like, — narrower next to the side where they received the roving, and wider next to the feed-rollers. That they performed the same function as Goulding's, — that they are indispensable, — that it would be impossible to make uniform rovings without them — that nobody would dispense with them — that they are used in appellants' finishers and Goulding's for the same purpose, viz: to guide the centres of the rovings opposite to the centres of the rings on the doffers, and to keep the slivers, as they enter the finisher, separate, so that one shall not get on top of the other in entering, also, that the appellants' finishers had two ring-doffers with spaces and rings of card fillet alternately, a ring of card fillet being opposite to each space, all performing the same function as that performed by the patentee's finisher. The experiments of Mr. Hibbard and Mr. Renwick show that the guide-pins or blocks preserve the substantial separation and identity of each sliver on the appellants' machine, and the question is nowhere

put by the appellants to Mr. Stetson whether there is any *substantial* difference in the two machines, nor does he anywhere state that there is.

This question would undoubtedly have been propounded to Mr. Stetson could he have answered it affirmatively.

But Mr. Stetson in fact admits that there is no difference in principle between the patentee's and the appellants' doffers, even if the patent stated that the rings and spaces were all to be of the same width, for he says the mechanism for taking off the roving from the main cylinder, condensing and winding the same in the description given by Aza Arnold of the machine which he says he made, and the mechanism for the same purpose on the appellants' finishers, act substantially alike, and the mechanism is substantially similar.

Cross-int. and ans. 53, p. 309.

Now, if we recur to Aza Arnold's description of the machine which he pretends to have constructed (and we shall have occasion to avert to this pretended invention again on the question of alleged priority of invention, and only refer to it now to show that Mr. Stetson does not believe or claim that there is any difference in principle between the appellants' finishers and those set forth in the patent), — we say if we recur to this description given by Arnold, we shall find that he says, speaking of the carding machine alleged to have been made by him, "I therefore invented a carding machine with two doffing cylinders, or doffers, as they are usually called, I furnished these with rings of fillets of card-teeth having alternate spaces between the rings and fillets. The spaces between the fillets of equal width to the fillets, so adjusted and arranged that the fillet on one doffer comes opposite the space on the other, so as to cause them to cover the whole length of the main cylinder." — Top of p. 190.

It will thus be seen by Arnold's description of his pretented invention, that the rings and spaces were all of the same width. And Mr. Stetson says there is no difference between Arnold's and appellants', clearly showing that in his opinion the fact that the spaces and rings are of different widths on the appellants' doffers does not make them, in principle, different from machines where the spaces and rings are all of the same width.

Mr. Stetson further says that more work can be accomplished on appellants' finishers than on Goulding's, but that the work is not so well performed on appellants'.

Int. and ans. 37, p. 296.

If it were true, in point of fact, that more work could be performed by appellants', it would make no difference on the question of infringement. Even if the appellants' was an improvement, it would be none the less an infringement. But we have seen before that Mr. Stetson admits that the patentee does not state that the rings on one doffer must be all of the same width as those on the other doffer.

Cross-int. and ans. 45, p. 306. Cited ante.

And we have also seen that even among the early ring doffers made by Goulding, he made the rings on the under doffer larger than those on the upper.

Truman Clark's deposition, ints. and ans. 15 to 20 inclusive, p. 880.
John Goulding's deposition, p. 464.

But the result stated by Mr. Stetson is not correct.

It is perfectly apparent that each doffer ring can deliver but one sliver, and that the doffer rings on both doffers combined cannot more than cover the width of the main cylinder. That is, they can take from the main cylinder so much, and no more wool than is on it; and besides, in the appellants' finishers, the aggregate combined width of the rings on the upper and lower doffer would not be equal to the width of the main cylinder. Mr. Stetson states the rings on the upper doffers of appellants' to be seven-eighths of an inch, and on the lower one inch in width. In the machines where they are exactly equal, their combined width would sweep the entire width of the main cylinder, and so be more likely to take all the wool from it.

Mr. Stetson was significantly asked the very question: "Can you get off any finisher that you ever saw more material than what covers the main cylinder whatever may be the number of rings on the doffer?" He answered, "No, nothing but what comes over on the main cylinder."

Cross-int. and ans. 38, pp. 304, 305.

No finisher, then, whether the rings on the doffers are of equal width or not, will or can take off any more wool than is on the main cylinder.

The testimony of Mr. Renwick and Mr. Hibbard shows that no more work can be performed by appellants' finisher than by a finisher having doffers with the width of the rings alike on each doffer.

Deposition of E. S. Renwick, ints. and ans. 30, 31, p. 898.
Deposition of Wm. C. Hibbard, int. and ans. 33, p. 914.

Mr. Hibbard speaks from a practical experience in the business of carding wool.

Deposition of Wm. C. Hibbard, cross-int. and ans. 5. p. 928; int. and ans. 4, p. 54.

The guide pins and the ring doffers in appellants' finishers, then, perform the same functions and in the same combination and in the same way described in the patent.

We therefore submit that the issue of infringement is clearly proved.

It should be remembered in this same connection that the testimony of Mr. Stetson relates merely to the finisher, and as to the other machines no attempt is made to question the infringement by evidence, and the answer we have before seen nowhere denies the infringement either in whole or in part.

The issues thus proved entitle the appellee to a decree in his favor unless some of the defences set up by the appellants be proved, and the burden of proof is on the appellants to sustain the defences alleged.

SUIT — GOULDING *v.* LOMBARD.

Before proceeding to consider the defences, the attention of the Court is called to the averment in the bill, that at the October Term of this Court, held in 1863, a verdict was recovered upon the Goulding Patent, as it existed before the last reissue, against Nathan A. Lombard, and also to the allegation in the answer that this verdict was the result of a compromise, and, therefore, entitled to no weight.

The Court is, of course, aware that this verdict was only set out in the bill as a ground for granting a preliminary injunction, and not

because it was supposed it would assist the appellee in procuring a final decree; but, inasmuch, as a great effort has been made by the appellants, through the testimony of John Gardner, to show that the recovery was not only collusively obtained but sought to be improperly employed in this cause, we pause to notice the proof on this subject.

1. John Gardner was the manager of the defence in that case, on behalf of the Salisbury Mills, then using a large number of the machines in question, of which company he was treasurer.

He, on page 152, testifies to a conversation with Goulding, who, as he swears, proposed that if he, Gardner, would acknowledge the validity of the patent, and thus influence payments by others, a settlement would be made on any terms he might dictate. Gardner states that in reply to this he declined to make any settlement which should recognize such validity, until he had carefully examined the question, and that if thereafter he should fail to be satisfied that the patent could be enforced, he would not pay or settle upon any conditions, *as it would be a wrong done to other parties*, by inducing them to pay for licenses under the patent, when he, Gardner, would not.

2. It appears that, after this alleged conversation, several suits were brought against builders of the machinery; and Gardner having, as he states, taken the high ground mentioned in his testimony, was, by the parties in interest, entrusted with the management of the defence. And, if he is *now* to be believed, the moment he ascertained he could so settle the case confided to him as to secure an advantage to his company, he, in violation of his duty, perpetrated the very wrong he swears he told Goulding he could not be induced to commit, — by permitting a verdict to pass in favor of the patent; and he swears he did this, believing at the time that Goulding was not the true and original inventor of what he claimed.

See p. 154.

Such an introduction of a witness does not commend him to the favor or confidence of a Court of Equity.

3. Upon looking at the circumstances under which, and the grounds on which, the verdict in question was rendered, it appears to be entitled to all the weight which should be accorded to it, had it been rendered

by a jury after the most full and deliberate hearing of testimony on both sides; whilst the testimony of Gardner, from page 156 to 160, attempting to impeach it by giving his version of the facts connected with the settlement, is, in material respects, untrue. The Court is invited to carefully peruse this, and then to read the short-hand writer's report of what took place upon the trial, and when the verdict was assented to, commencing on page 862, and also the statement of Judge Curtis, to be found on page 864, detailing the terms of the settlement and the reasons which led the parties contesting the validity of the patent to yield without farther contest. In this connection the Court is referred to the record in the case against Lombard, p. 866 to 876, and to the license granted to the defendant Lombard, set out on page 796, and also the list of licenses granted since the verdict, commencing on page 800, showing the general acquiescence of the woollen manufacturers in the validity of Goulding's Patent.

George D. Clark's deposition, ints. and ans. 31, p. 795; cross-int. and ans. p. 796; Exhibit D,[1] pp. 800 to 811, inclusive; int. and ans. 21, p. 785; Exhibit 32, p. 796.

4. In view of the circumstances under which this settlement was made and verdict rendered; considering also the character and eminence of the counsel employed by Gardner to conduct the defence; the various defences interposed; the means of proof then in the power of those who had combined to defeat the patent; and the causes which finally led to an abandonment of the defence, — and it is certainly but reasonable to say that a final decree for the appellee in this case will not be more satisfactory to this Court, as a ground for granting preliminary injunctions, than the verdict, settlement, and wide and varied acquiescence in the validity of the patent, here sought to be questioned and disturbed.

DEFENCES — POWER OF CONGRESS TO PASS ACT.

We will now proceed to consider the defences and the testimony offered in respect to them, and in doing this we may adopt a different order than that in which they are set forth in the answer.

First, Congress had power to pass the Act authorizing the Commissioner to extend the patent.

Constitution U. S., Art. 1. Sec. 8.
Evans *vs.* Jordan, 9 Cranch, 199.
Evans *vs.* Eaton, 3 Wheaton, 454.
Bloomer *vs.* McQuewan, 14 Howard, 539.
Blanchard *vs.* Sprague, 3 Sumner, 535.
Blanchard Gun Stock Co. *vs.* Warner, 1 Blatch. 275, 276.
Blanchard *vs.* Haynes, decided in New Hampshire by Judge Woodbury, 6 Western Law Journal, p. 83.
Bloomer *vs.* Stolley, 5 McLean, 158.

This power has been again and again exercised by Congress.

Vide list on p. 728, 729.

Second. The statement in the answer that the Act was procured by fraud, cannot avail the appellants.

DEFENCES — CAN THE JUDICIARY REVISE THE ACTION OF CONGRESS.

(*a.*) An act of Congress cannot be attacked collaterally in a suit between private persons, by an allegation that it was procured by fraud. The Judiciary has no such control over legislation.

Fletcher *vs.* Peck, 6 Cranch, 87, 130, 131.
Gibson *vs.* Gifford, 1 Blatch. 531.
Stark *vs.* McGowan, 1 Nott & McC. 400, 401.
Commonwealth *vs.* Breed, 4 Pick. 464.

(*b.*) Fraud is a conclusion of law from facts. The facts which constitute the fraud must be specifically alleged. But this answer alleges no such facts.

Gilbert *vs.* Lewis, 7 Law Times, N. S., 543.
Goodyear & al. *vs.* Prov. R. Co., per Clifford, J., C. C. U. S., Rhode Island. 2 Fisher Patent cases 514, 515, and cases there cited.

(*c.*) Not the slightest evidence whatever of the procurement of the Act by fraud has been adduced.

DEFENCES — EXTENSION OF PATENT.

Third. It is alleged in the answer that the extension of the Patent was procured by fraud. This allegation cannot avail the appellants.

Field *vs.* Seabury, 19 Howard, 332.

Goodyear *vs.* Prov. Rubber Co, 2 Fisher Pat. Cases, 514, 515.

Foley *vs.* Harrison, 15 Howard, 446.

Phila. & Trenton R. R. Co. *vs.* Stimpson, 14 Peters, 458.

Jackson *vs.* Lanton, 10 Johnson, 23.

1. The general allegation (p. 16), that the petition was false and fraudulent is wholly insufficient, even if this alleged defence was open to the appellants. The answer should have pointed out in what particulars it was false, and what facts rendered it fraudulent.

Gilbert *vs.* Lewis, cited ante.

2. The only specific statement as to the extension is, that the allegation in the petition, that the manufacturers acknowledged his claims and paid him $5,000, was not true.

(*a.*) It is not alleged that Goulding knew it to be false and inserted it to deceive the Commissioner.

(*b.*) Nor is it alleged that any attempt was made to prove this allegation, or that the Commissioner in fact believed it or was in any way influenced by it, still less that it *did procure* the extension.

(*c.*) The opinion of the Commissioner clearly shows that if this statement as to the manufacturers had any influence on his judgment which does not appear, it must have been adverse to the extension.

Exhibit Y p. 313, 314.

(*d.*) The averment in the answer is, that it is not true that the manufacturers of New England acknowledged Goulding's claims and paid him $5,000, and then proceeds to allege — not that it is untrue that they paid him that sum — but that it is not true that his claims were acknowledged by them. No proof has been introduced by the appellants to establish this proposition, whilst the appellee has shown, by the testimony, that the manufacturers, in the most solemn manner, did acknowledge his claims as set forth in his petition. Again, whilst it is not averred in the answer that they did not pay Goulding the sum of $5,000, no proof on that point has been offered by the appellants.

It is proved by Isaac Thayer, that the manufacturers did acknowledge Goulding's claims.

See his deposition, ints. and ans. 1 to 12, inclusive, p. 758 to 760 inclusive.
John Goulding's deposition, pp. 594, 595.

What sum, in the aggregate, he received does not appear. There is little doubt, however, that he received the amount stated in his petition. If the appellants would avail of the fact that he did not, it must be upon proof, and none is in the case.

It does appear upon Mr. Goulding's cross-examination that he received of the Woolen Manufacturers in and after 1837, $2,861.68 (cross 1064, p. 628), and of B. F. Smith, $333 (cross 1044, p. 625), and it also appears by Kuhn's deposition that Bussey paid him, Goulding, $700 (cross 11, 12, p. 134).

Lawrence's account shows that he received for Goulding $2,567.50.

Exhibit 28, p. 648.

Goulding says that he received of the manufacturers, on and after 1837, $2,861.68, which includes the balance of $111.18, paid to him as by Lawrence's account.

So we submit that the allegation of fraud is upon the facts wholly without a particle of proof to sustain it.

DEFENCES — VALIDITY OF REISSUE.

Fourth. The validity of the Reissued Patent, on which the bill is founded.

The allegations in the answer are on p. 19.

The first is a denial "that said last mentioned patent was for the same invention as that *intended to be secured by said patent so surrendered.*"

(*a.*) The 13th section of the Act is not limited to "the same invention *intended* to be secured by the surrendered patent."

(*b.*) The patent surrendered was that of July 29th, 1836, and the reissued patent contains the same description and drawings as the surrendered patent, and the claims were made more clear and specific, because the claims in the patent of 1836 were found, on the trial before

Judge Sprague, to be open to much doubt and controversy, and it was believed that they did not rightly cover the invention.

(*c.*) The action of the Commissioner is conclusive evidence that the surrender and reissue were regular, when the only difference between the two patents is in the claims, and the claims in the surrendered patent are obviously vague, confused, and of doubtful meaning, and there is no evidence of fraud.

Laws Dig., Title, Reissue B., p. 617, 618.
Stimpson *vs.* Westchester R. Road, 4 How. 404.
Woodworth *vs.* Stone, 3 Story, 753.
Colt *vs.* Young, 2 Blatch. 471.
Clum *vs.* Brewer, 2 Curtis, 518.
Battin *vs.* Taggert, 17 Howard, 84.
Carver *vs.* Braintree Mfg. Co., 2 Story, 440.

(*d.*) There is not the slightest reason to doubt the identity of the invention.

But the answer further "alleges that the same was surrendered fraudulently, to enable the plaintiff to cover and secure by said reissue alleged inventions embraced in other patents heretofore granted to the said Goulding, to wit:" it thus specifies three patents, dated respectively, August 24, 1827; February 16, 1829; July 21, 1829.

The history of these patents, and of the surrendered patent, completely answers this allegation of fraud.

By reference to p. 284, it will be seen that Goulding took out his original patent of December 15, 1826, which was surrendered and reissued July 29, 1836 (p. 674), which was surrendered, and the patent reissued to Jordan June 28, 1864 (p. 25); and that after taking out that original patent of December 15, 1826, he took five other patents, each containing the same descriptive parts as the first patent, and each claiming something described but not claimed in the first patent. All these patents which followed the first were simply void; because, their subject matters being *described* in the first patent, the inventor could not prolong his term by taking out subsequent patents for what he had described, but not claimed, in the first. His remedy was to surrender his first patent, and make his claims broad enough to cover his invention.

This Goulding did. He surrendered all these subsequent patents as simply void, and he at the same time surrendered his original patent, and took a reissue of it July 29, 1836, intending to cover his whole invention.

John Goulding's deposition, int. and ans. 130, p. 484.

And the reissue was for the unexpired term of fourteen years from Dec. 15, 1826, the date of the earliest patent on this subject.

It is not denied in the answer, that the reissue to Jordan was intended to cover only what the reissued patent of 1836 (which Congress authorized the extension of) was intended to cover, and that this reissued patent of 1836 was rightly and lawfully intended to cover the whole invention, parts of which Goulding had attempted to cover by his early patents.

See Sickles *vs.* Evans and al.
Cir. Ct. U. S. Mass. Dis.

A reissue may be granted to remedy a defect in claim.

Battin *vs.* Taggert, 17 Howard, 84.
Carver *vs.* Braintree Mfg. Co., 2 Story, 440.

It should be added, that all the patents surrendered in July, 1836, were destroyed with the Patent Office, and consequently only the secondary evidence, detailed on page 284, &c., exists of their contents.

DEFENCES. REISSUE — IDENTITY OF INVENTION.

Now we shall find, as stated before, that it is agreed by both parties, that the descriptive parts of all these patents so surrendered are identical, the claiming parts only being different.

Agreement p. 284, 285, 286, (this is part of an agreement beginning on p. 272.)

Deposition of Thomas D. Stetson, (defendant's witness,) cross-int. and ans. 10, p. 299; ints. and ans. 4, 5, 6, 10, 13, 17, p. 288, 289, 290.

Edward S. Renwick and William C. Hibbard both testify that there is no device or mechanism set forth or mentioned in the reissue of 1864, which is not set forth or mentioned in the patent of Dec. 15, 1826, and that there is no device or mechanism set forth or mentioned in the reissue of 1836, which is not set forth or mentioned in the patent of Dec. 15, 1826, and that there is no device or mechanism set forth in either reissue that is not contained in the other reissue.

Deposition of Edward S. Renwick, ints. and ans. 1 to 6, inclusive, pp. 891, 892; cross-int. and ans. 1, p. 66.

Deposition of Wm. C. Hibbard, ints. and ans. 1 to 6, inclusive, pp. 907, 908.

And Mr. Stetson, the appellants' witness, admits this.

Deposition of Thomas D. Stetson, cross-int. and ans. 8, p. 299.
Amendment to his answer to direct, 37, pp. 296, 297.

The only fault that Mr. Stetson finds with the reissue of 1864 is, to use his own language, "in seeming to apply the arrangement of the drawing and condensing apparatus at one side instead of in front of the doffer; this arrangement now believed by some to be important. Mr. Goulding's original description in 1826, 1827, 1829, all just alike, applies to the first breaker alone, and disposes of it in less than half a line in a specification containing some one hundred and eighteen lines. The reissue has arranged the language so as to make it apply to both the first and second breakers." — p. 299.

This criticism of Mr. Stetson shows that after the most minute and thorough examination and comparison that he has been able to make, he finds only this one thing to object to, and is the strongest confession possible that the reissue of 1864 is for the same invention.

Let us recur for a moment to the description in the old patent of December 15, 1826. Mr. Goulding there says, "I can take away the sheet of carded material, U, previously freed from the delivering card roller, H, by means of the comb, b b, either laterally to the right or left, by means of two delivering rollers shown at J J, through the turning tube or pipe, Q, to which a slow rotary movement is given by means of a band passing from a drum actuated by the machine operating upon the pulley

affixed to the tube." "The roving or sliver in passing through the tube is formed into a loosely combined cylinder, which is guided between the drawing rollers, J J, and thence passed round the bobbin, M, which is retained by means of its larger ends, N N, and its axis upon the periphery of the drum, L, upon which it rests, and partakes of the rotary movement communicated to that drum by the machinery. The roving or sliver may be evenly wound upon the bobbin, M, either by carrying it and the drum, L, backwards and forwards, or by passing it between guides, P P, affixed to the bar, O, to which a similar lateral movement is communicated, as will be described. The same apparatus may also be used in front of the delivering card roller, H." — pp. 278, 279.

He then proceeds to state that the rovings are to be passed through the second carding machine (page 279); and he says, "The two carding sheets, U U, after being taken off from the delivering card roller, H, by the comb, b b, are then passed straight through the rotary tubes, Q Q, where, becoming rounded, they are received between the drawing rollers, J J, and put through the guide pins, P P, and finally wound upon the bobbins, M M, in the manner before described." — p. 279.

This description is taken from the patent of December 15, 1826, set forth in the declaration in the suit *vs.* Washburn and *al.*

Mr. Goulding, thus in speaking of the first breaker, says the slivers may be taken off laterally to the right or left, or the same apparatus may be used in front of the delivering cylinder, H, and in speaking of the second card, he refers to the delivery being "in the manner before described." He evidently means that the sliver may be taken to the side or front of the first breaker, and so in the same manner from the second breaker. This is adverted to only because Mr. Stetson in his answer to cross-interrogatory 8, page 299, refers to it; and it is of no importance, as he admits, that there is no mechanism or machinery in the reissue of 1864, which is not described or referred to in the older patents.

It is also admitted by Mr. Stetson, that in describing the first breaker, the patentee has described all the necessary means of taking off the roving, either laterally or in front of the machine, and has expressly stated that either of these modes of using the mechanism may be employed at the will of the constructor. The patentee does not repeat

this statement in reference to the mode of using the same mechanism in connection with the second breaker, and we submit that such repetition was not necessary, because any competent constructor would have learned the fact from one statement of it in connection with the first breaker, and if this could admit of any doubt, it would only be a doubt as to what the statement would teach a constructor to do, and when the Commissioner allowed this possible doubt to be entirely removed by a repetition of the instruction in connection with the second breaker, he adjudicated as a matter of mechanical skill, that in substance, the specification of the last reissue, did not differ from the previous specifications, and we submit that this adjudication thereon is final. It is thus clear, from all the testimony in this case, that there is no device or mechanism set forth in either reissue, which is not in the patent of December 15, 1826, and that there is no device or mechanism set forth in either reissue that is not in the other reissue, and that the descriptive part of all the old patents is alike.

There is then no mechanism or device set forth in the reissue of 1864, which was not part and parcel of the original description of the invention.

DEFENCES. REISSUE — CLAIMS IN OLD PATENTS.

And we therefore submit that it is apparent that the reissue of 1864 is for the original, actual invention, and the purpose of the law is to give to the inventor the benefit of his actual invention.

It is alleged in the answer, that the reissue of 1864 was procured "to enable the plaintiff to cover and secure by said reissue alleged inventions, embraced in other patents heretofore granted to said Goulding."

If this means that the reissue was procured to enable the appellee to cover and secure by said reissue, inventions claimed in and effectually granted by the old patents that were surrendered in 1836, it is not true, as shown by the testimony of Mr. Stetson, the appellants' own witness.

Mr. Stetson's deposition, ints. and ans. 21, 22, pp. 291, 292; cross-int. and ans. 11, pp. 299, 300.

A recurrence for a moment to the claims set forth in the old patents

will also show that there is no foundation for this allegation in the answer.

The claim in the patent of December 15, 1826, is "The method herein described and set forth, in which the sliver, slubbing or roping, consisting of wool, flax, cotton, hemp or other fibrous material, or of a mixture of the same or any of them, and whether consisting of one or more strands is received or wound in any carding machine on bobbins by means of drums." — p. 284.

The claim in the patent of April 27, 1827, is "The method herein described and set forth in which the strands of wool, flax, cotton, hemp or other fibrous material in the second carding operation hereinbefore described are fed to the card and conducted so as to cause the sliver, slubbing or roping to be even and of an uniform size when taken or delivered from the delivering cylinder or doffer card." — p. 284.

The claim in the patent of July 10, 1827, is "The part which I claim as new," etc., etc., "is the following, that is to say, it consists in the twisting of the sliver, slubbing or roping, whether it be of wool, flax, cotton, hemp or other fibrous material, or a mixture of the same, or any of them, while it is leaving or delivering from the finishing card preparatory to the process of spinning, which twisting renders unnecessary the use of a comb or doffer, hitherto practised. This twist may be produced by the sliver, slubbing or roping being passed through tubes, as described in the aforegoing specification, or by being passed between pulleys or between endless bands." — p. 285.

The claim in the patent of Aug. 24, 1827, is "The method hereinbefore described and set forth, in which the sliver, slubbing or roping, consisting of wool, flax, cotton, hemp or other fibrous material, or of a mixture of the same, or any of them, is unwound or delivered on a mule spinning machine or drawing frame by the means of drums delivering it from bobbins, whether jaws or rollers are or are not used in such mule spinning machine or drawing frame." — p. 285.

The claim in the patent of Feb. 16, 1829, is "The method herein described and set forth, in which the strands of wool, flax, cotton, hemp or other fibrous material, in the third carding operation hereinbefore described, are fed to the card and conducted so as to cause the sliver,

slubbing or roping to be even and of an uniform size, when taken or delivered from the delivering cylinder or doffer card." — p. 286.

The claim in the patent of July 21, 1829, is the following; viz, "It consists in the crossing of the wool while it is delivering from the card, and before it is carried through the tube." — p. 286.

A comparison of these claims with the claims in the reissue of 1864 will show that the claims in this reissue are not the same as the claims in any one of the old surrendered patents.

DEFENCES. REISSUE — DOUBTFUL CONSTRUCTION OF CLAIMS BEFORE.

In the suit of Goulding *vs.* Lombard which arose on the reissue of 1836, there was much controversy and argument upon the question of the construction of the claim in that patent. — p. 864.

The Court did not formally rule upon the construction of the claim, and a verdict was taken as stated by Judge Curtis, pp. 864, 865, 866.

The construction of the claim was open to doubt.

It was insisted at that trial by the defendant's counsel in that case that the claim was for such a physical combination of the machinery described as to produce thread from wool, and that inasmuch as the different machines were to be separately and successively employed the patent was void.

It was insisted by the counsel of plaintiff in that case, that though there were particular expressions which indicated one combination only, the claim was susceptible of being so construed as to call for separate combinations, each of which was capable of performing some one of the operations necessary to produce thread from wool, that one combination was to perform the operation of twisting and winding while delivering from the cards, another to perform the operation of feeding the cards, another to perform the operation of unwinding for spinning, and that each of these was separately and sufficiently described in the specification.

This then we submit establishes a perfectly clear case for a reissue.

DEFENCES. ALLEGED INVENTION OF AZA ARNOLD.

Fifth. We now pass to a consideration of the defence that one Aza Arnold now of Washington, D. C. did, as early as 1811, invent and put in operation the machinery in question in Pawtucket.

We will offer some general suggestions as to this witness, and then proceed to consider in detail the testimony on this branch of the case.

The Letters Patent are prima facie evidence of novelty.

The appellants' theory on this subject, is that Arnold having in the year 1811 completed and tested the machines, arranged in the fore part of 1812, with parties building a factory at Smithfield, about three and one-half miles from Pawtucket, to set up this newly invented machinery there. That this was done, and a part completed as early as the autumn of that year — the machinery built and used by Arnold, at Pawtucket, being put into the factory at Smithfield. That Arnold was connected with that mill as part owner until 1815, when he sold out his interest there in the belief that woolen manufacturers were to be ruined by the introduction of foreign goods at the close of the war. And that his associates, also entertaining this belief, converted the establishment into a cotton factory.

The propounders of this theory do not pretend that Arnold, who, according to his own statements, continued to construct machinery for making woolen yarn until about 1828 or '9, ever afterwards made or put in operation any like that pretended to have been, by him, made at Pawtucket; but on the contrary, he is compelled to admit, that such as he made or superintended the construction of, was for making yarn from short rolls, on the old plan.

To show how utterly improbable it is, that Arnold could have known of the present plan without having introduced or attempted to introduce it into the woolen mills of the country, we here refer to its almost immediate and very general adoption as soon as it was completed by Goulding. And for proof showing the extent to which his machinery has been

employed, the excellence of its products and the saving attained, the Court is referred to the testimony of

Geo. L. Davis, p. 314 to 318.
Chas. Trafton, p. 377 to 378.
Jesse Eddy, p. 381 to 384.
John Eddy, p. 398–400–402.
Thomas Musgrave, p. 412 to 415.
Miles Sprague, p. 421 to 422.
Truman Clark, p. 882 to 888.

That manufacturers had long been seeking for some means by which they could make the perpetual roving, as it was called, appears from the testimony of Musgrave (pages 418–19–20, and of Clark, page 882).

It is thus apparent that the introduction of this machinery worked so radical a change in the mode of manufacturing woollen yarn — reducing the cost of its production by more than one-half — making a better article, and working stock effectively, which could not before be so employed — that manufacturers would have eagerly adopted it upon its attempted introduction by Arnold, had he possessed a knowledge of it in 1812.

He, however, pretends that he sold out his interest in the machinery, and did not seek to introduce it because of the effect which the close of the war had upon the woolen manufactories of the country,— he stating that many of them stopped. No proof on this point was offered by the appellants, but we have introduced several witnesses to show that this pretence of Arnold's is false, and that many mills were in operation from 1815 onward.

And even Arnold testifies that after leaving Smithfield, and prior to 1826, he made many sets of woolen machinery, all for the purpose of producing yarn by the old mode.

To relieve the case, as far as possible, from the effect of the presumption arising from this state of facts, Arnold, on his re-direct examination, swore that he, in 1826 and 1827, constructed woolen machinery for the Great Falls Company, under the direction of Mr. Wolcott, its superintendent, to whom he proposed the adoption of his new method of pro-

ducing roving directly from the carding engine, which proposal Wolcott refused to adopt.

And he also swears he had the privilege of taking $20,000 in the stock of the Company, which he declined to do because of their adoption of the old-fashioned machinery. It will appear that Goulding's machinery was introduced there before Arnold left.

He admitted that he made the drawings for the machinery, which drawings we produced, and also that the engines were all alike, and all made the short rolls.

He states that three sets of the machinery were in operation in 1826 or 1827, and that all were in operation in the fall of 1827, and that he left the employ of the Company in the autumn of 1829, and that he does not recollect to have built any woolen machinery afterwards.

But to convey the impression that he bore his pretended improvements constantly in mind, he swore that after leaving the employ of the Company he made a conditional agreement with John D. Lang, Joshua Meader, and Isaac Varney for the purchase of a mill privilege, for the purpose of putting his new machinery in operation.

Although from lapse of time Arnold may well have supposed that most, if not all, of the persons who could contradict his statements were dead, and although he states the death of several, yet we have been able to procure the proof showing his testimony, as to the machinery put up for the Great Falls Company, and his pretended proposal to Lang and others to have been pure and deliberate falsehood.

The factory of the Great Falls Company was destroyed by fire, and rebuilt in 1843.

See p. 372.

Its foundations were first laid in 1824, *(Ib.,)* and when the woolen machinery to be placed therein was planned, it was, of course, to be constructed on the old plan—as Goulding only completed his machinery for spinning in the latter part of the summer of 1825.

Consequently drawings of carding engines for making short rolls, and of billies for spinning them into roving, were made by Arnold, and having made these drawings, he swears the Company constructed machinery to make short rolls only.

In truth, however, after some ten or twelve sets of these carding engines had been constructed, Goulding's improvements came to the knowledge of Wolcott, who thereupon discontinued the making of more machinery on the old plan, adopted Goulding's invention, and before the close of 1828 his condensing cards for making perpetual roving, with his means of spinning it, were in operation in the mill. These facts are fully proved by the foreman of the mechanics' shop, and by other witnesses, and no proof whatever has been introduced in reply.

They are proved by George Bullard, who entered the employ of the Company June 13th, 1825, and left it the last of November or first of December, 1828.

He was soon made master mechanic of the shop in which the machinery of the Company was made, and so continued 'until he left. With that department Arnold had nothing to do, except that the witness was told he made plans 14 and 15, which were delivered to witness from which to make jennies and carders on the old plan.

See pp. 324–5–6.

He swears that cards and jacks of Goulding's were adopted and introduced into the mill of the Company a year or more before he left, with which Arnold had nothing to do.

The testimony of this witness is confirmed by that of his brother, Dana Bullard, and by the testimony of Huntress, and Daniel T. Willey.

Arnold swears he did not know who so altered the cards of the Company as to make perpetual roving, thus implying he knew they had been at some time so altered. To have confessed the details as to the change whilst he was there, and without his aid, would have been the strongest admission of the falsity of his story; and although this Company was the largest woollen manufactory in the United States (see p. 258), by reason of which a change of such magnitude must have been well known to the persons employed there, Arnold, for reasons of his own, and supposing, no doubt, that we should be unable to prove anything about it, saw fit to recollect nothing about the change, except the fact of change. The fact of the change he was compelled to admit. The statement of Arnold that he had made a conditional agreement with

Lang and others to put in operation the Goulding machinery is also false, and proved to be so, as we shall hereafter see. (pp. 62, 63, 64 of this brief.)

We will now proceed to consider, in detail, the testimony as to the alleged invention of Arnold.

Arnold's testimony on this subject is contained in pp. 188 to 270, inclusive.

Arnold undertakes to describe his alleged invention in his answer to the 6th interrogatory, p. 189.

This machinery alleged to have been constructed by Arnold, he says he constructed during the war of 1812.

Arnold's deposition, int. 2, p. 189.

Neither this machinery nor any remnant or vestige of it is produced.

A sketch, which is alleged by Arnold to be a sketch of it is produced, but this sketch was made only four weeks before he testified.

Arnold's deposition, cross-ints. and ans. 18, 19, 22, pp. 200, 201.

He had read and had full knowledge of Goulding's patent and specification before he testified and before he made this sketch.

Aza Arnold's deposition, cross-ints. and ans. 8 to 22, inclusive, pp. 199, 200, 201.

He knew of Goulding's invention as early as 1830.

Int. 2, p. 257.

Goulding saw Arnold in Washington in 1848. Arnold knew then that Goulding was trying to get his, Goulding's, patent extended, and Arnold then saw Goulding's drawings.

Jno. Goulding's deposition, ints. and ans. 181, 182, 183, p. 630.

Arnold is not called to controvert this.

Arnold says his sketch correctly represents the machinery constructed by him.

Aza Arnold's deposition, cross 242, p. 228.

He admits that his sketch represents the modern and complete carding machines of the present day.

Aza Arnold's deposition, cross 269, 270, 271, 272, 273, pp. 231, 232.

The main body of the machine is unlike anything in existence before 1820, and Arnold nowhere states that he made the main body of his alleged machine differently from those then in use.

Wm. C. Hibbard's 2d deposition, ints. and ans. 69, 70, p. 923.
Wm. C. Hibbard's 1st deposition, int. 4 and ans., p. 54.
Edward S. Renwick's 2d deposition, ints. 5 and 6 and ans., p. 931.

His drawing does not agree with the description of his alleged machinery as given by him in his deposition.

Wm. C. Hibbard's 2d deposition, ints. and ans. 53, 55, 56, 57 and 58, pp. 918, 919, 920; int. 68, pp. 922, 923.
Edward S. Renwick's 3d deposition, ints. and ans. 14 and 15, p. 933; int. 4, p. 930; ints. 24 to 29, pp. 935, 936.

And we shall hereafter see the difficulties into which Arnold was plunged by the production of this sketch.

The only witnesses produced by the defendant in relation to any part of this alleged invention of Arnold besides Arnold, are Waterman T. Dexter, Samuel Greene, and Noah Draper, and neither describes any more than a very small part of what Arnold claims, and nowhere any combination claimed by Goulding.

Dexter's testimony, as to what he saw, is contained in his answers to ints. 3 to 7 inclusive, and cross-ints. 1 to 6 inclusive, pp. 163, 164.

All that Dexter saw then was Arnold spinning on a jack or jenny, he don't know which, from roving. The roving was on spools that were fed by an apron to the rollers (i. e., the rollers or jaws of the jack). This then, was a common feed apron, upon which a spool containing rovings was laid. This was all he saw. It will not be pretended that that is the device claimed by Goulding. This was all Dexter saw, and he never saw it but once, although he received the wool for Arnold to card and delivered the short rolls, as Arnold made them, through the entire carding season of 1812, i. e., from June to October.

Waterman T. Dexter's deposition, cross-ints. and ans., 3, 4, 5. 6, 19, 21, 26, 30, 34, pp. 164 to 167.

All that Greene (who is Arnold's cousin,) saw, was a machine with ring doffers. It cannot be pretended that this is all which Goulding claims on the finisher. He claims a combination in which ring doffers are but an element.

Samuel Greene's deposition, ints. and ans., 1 to 15, p. 168, 169, 170; cross 1, 2, 7, 9, 10, 11, 14, 17 to 26, 29, 40 to 45, inclusive, pp. 170 to 174, inclusive.

All that Draper undertakes to swear is, that he saw a carding machine with ring doffers, tube, and two rollers.

Noah Draper's deposition, ints. and ans. 1 to 8, inclusive; 174, 175; Exhibits 12, 13, B; p. 186, 187, 188.

Arnold wrote to Draper exactly what he wanted to prove by him, and told him if he recollected it would be of *interest* to him and the manufacturers. He also wrote him that Samuel Greene recollected things which, in fact he, Greene, did not recollect.

Exhibits 12, 13, pp. 186, 187; cross 2, 3, 4, 5, p. 177.

But although Arnold had written Draper just what he wanted him to swear to, and represented that Samuel Greene recollected what he did not in fact recollect, all that Draper can swear as to the alleged machine of Arnold is, that it was a carding machine, that it had two cylinders and ribbon fillets wound round the doffers put on the cylinders, so that

each doffer took off a strip of the wool off the main cylinder, and the other one the same, so that it swept or took all the wool off the main cylinder; then that each strip went from the cylinder to the tube and then betwixt two rollers, and then where it went he has forgotten. This is all he can state about it; and he don't remember whether bobbins or spools were used for any purpose.

N. Draper, direct examination, pp. 174, 175, 176, 177.

When Draper wrote the letter of March 2, 1865 (Exhibit B, p. 188), all he remembered was that the machine had two doffers, having rings of fillets. In that letter he speaks about an impression as to the roping passing from the doffer, &c.

But it is to be observed that Arnold wrote to him just what he wanted him to swear to, and besides told him if he could recollect what he, Arnold, wanted him to recollect it would be of *interest* to Draper. But even with this pressure upon him and inducement held out to him that it would be for his *interest* to recollect, he recollects nothing of importance.

Draper shows an interest in this case in behalf of Arnold which unfits him to testify frankly.

Noah Draper's deposition, cross-ints. and ans. 52, 53, 54, 55 to 60, inclusive, pp. 182, 183, 185.

Why is Arnold, if a mere witness, writing letters to witnesses and making himself so active in the case?

Draper the moment he gets here is found by Arnold, and they then talk the matter over.

N. Draper's deposition, cross and ans. 6, 7, p. 177.

Draper really had had no occasion to think of this alleged machine since the time when he says he saw it.

Cross 51, and ans. p. 182.

Had the machine which he saw in Arnold's possession been a success, Draper would certainly have suggested it to the woollen factories which he visited and worked for in New York, especially the Oriskany Factory,

which was a very large one, and for which factory he worked on looms. They used the old process of short rolls.

Draper's deposition, cross-ints. 22 to 42, inclusive, pp. 179 to 182; cross-ints. 9 to 16, p. 178.

Arnold when he testified early in March, 1865 (p. 188), knew where Draper lived, as he had written him a letter to his very town, February 22, 1865.

Exhibit 12, p. 186.

N. Draper's deposition, cross-ints. and ans. 2, 3, p. 177.

Arnold testifies, more than a week after he had written to Draper at Fredonia, that he heard he lived near Utica (cross-int. 7, and ans. p. 199).

This letter of Feb. 22, '65, was addressed to Draper at Fredonia, and Arnold in it states that he has found out where he lives. Fredonia is 250 miles from Utica.

Noah Draper's deposition, cross-ints. and ans. 1, 2, 3, 4, 5, p. 177, and Exhibit 12, p. 186.

Arnold wished to conceal Draper's residence until he could personally see him. But it is clear that what Draper testified he saw, did not contain either of the patented combinations.

Arnold says that Samuel Fisher worked on or used the machinery alleged to have been invented by Arnold.

Arnold's deposition, ints. and ans. 23, p. 196; cross-int. and ans. 344, p. 241.

But Fisher never did work on or use any such machinery, or any woolen machinery at all: but he did work for Arnold in Pawtucket.

Samuel Fisher's deposition, ints. and ans. 1 to 7, pp. 447, 448.

Arnold says the Samuel Fisher he refers to lived in Lowell or Boston, and he used to visit Somersworth, (Great Falls,) and that two of his brothers worked there.

Aza Arnold's deposition, cross-int. and ans. 6, p. 198; cross-int. and ans. 7, p. 199.

It is perfectly certain that the Samuel S. Fisher produced, is the man Arnold referred to, as he lives in Lowell. He worked for Aza Arnold in Pawtucket, and he had a brother who worked at Somersworth, for the Great Falls Manufacturing Company, when Arnold was there, and the witness used to visit his brother during Arnold's stay there.

Samuel S. Fisher's deposition, ints. and ans. 1, p. 447. Recalled, int. and ans. 1, 2, p. 449.

Arnold says all his workmen who used or worked on his alleged machinery he thinks are dead, except Noah Draper and Fisher.

Aza Arnold's deposition, cross-int. and ans. 6, p. 198; direct and ans. 23, p. 196.

What purports to be a full description of the machinery alleged to have been invented by Arnold, is given by him in his deposition, and his testimony may be considered in various aspects.

1. In respect to what Arnold actually did invent or use.

2. In reference to the question whether it was anything more than an abandoned experiment and a failure.

And first, Arnold probably had a carding machine with ring doffers, and that was all, and this machine was never used except by way of experiment.

From pages 206 to 209, Arnold gives some account of his early life, what he did, and from page 189 to 192, he describes the alleged machinery which he says he built at Pawtucket in 1811.

In describing the finisher Arnold mentions neither the bobbins, bobbin stand or creel, nor pins to direct the slivers to their proper positions upon the carder. These are, by Renwick, declared to be indispensable parts of the machine as described by Goulding, and necessary to its successful operation.

See p. 893.

And in this he is confirmed by Hibbard, and not contradicted, p. 909.

Nor does Arnold, in his testimony, state a mode of combining the drawing-off apparatus with the carding machine, so that rovings could be drawn off as fast as they were delivered by the doffing apparatus, with-

out straining. He merely states he brought the drum in front of his carder, and so adjusted it as to enable him to wind up the rovings automatically, but by what mechanism, or whether practically, so as to meet the indispensable requirements stated by Renwick on page 893, does not appear. Hibbard also states, on page 926, that there was no practical mode described of arranging these. He also states, on page 920, that bobbins could not have been used on the finisher without heads, nor with heads on the apron of the billy, as stated by Arnold. — p. 921, 933, 934.

The effort by this proof is to show that before Goulding invented, improvements like his had been reduced to practice. It must, therefore, appear affirmatively that this was so. In the essential particulars mentioned the proof fails; nor does Arnold state that he applied the traverser to the finisher for the purpose of winding the roving upon the bobbins, and this was indispensable to the working of the machine.

See Renwick, pp. 893, 934.
Hibbard, pp. 909, 910, 922.

It is also positively proved that Arnold nowhere describes or shows either in his deposition or drawing any tube that could perform successfully a condensation of the sliver or roving on the finisher.

E. S. Renwick's 3d deposition, ints. 30 to 34, inclusive, pp. 936, 937.

Wm. C. Hibbard, 2d deposition, int. and ans. 81, p. 926.

And in view of all this testimony, Hibbard states (at p. 922), that a mechanic could not, from Arnold's description, construct the machinery.

A careful examination of that part of Arnold's testimony, in which he describes the alterations made in his billy, to fit it for spinning roving into yarn, will show that he failed to make it practically useful for that purpose. He but tried an experiment, and a very rude one at that. He describes what he did on page 191, and after trying his experiment, as he calls it, he left the jack as before, suitable for the manufacture of roving in the old way. On page 193, he states that drums were afterwards furnished in place of the apron roll. How they were combined with the machine he does not state; nor does he state that they were arranged with their axes parallel with the line of spindles; nor that the drums were so combined as to unwind the roving intermittingly, these

being, as Renwick testifies (at page 892), indispensable conditions to the working of the machines.

Hibbard, p. 909.

It appears that Arnold wrote a pamphlet eight or ten years ago.

Aza Arnold, int. 5 and ans., second deposition, pp. 257, 261.

This was after Arnold had seen Goulding's drawings.

John Goulding's deposition, ints. and ans. 181, 182, 183, p. 630.

In that pamphlet so written and addressed by Aza Arnold to Congress, and which was drawn up to influence an extension of his cotton speeder patent, he only claims to have invented a "wool carding machine which makes the perpetual roving by having two doffing cylinders, with alternate rings of card fillets to receive the wool from the main cylinder and deliver the rovings." — p. 261.

He also says, in the same connection, that "all the condensers of wool rovings are based upon this invention, and without it they could not be used." — p. 261.

He does not pretend here that he invented the principle of the condensers now in use, but only that he invented the ring doffers. That is the whole extent of his claim eight or ten years ago. This was before any controversy as to the Goulding patent, and at a time when there was no motive except to state the truth. His claim has considerably enlarged since this suit was brought.

He says nothing in this pamphlet about any invention on the jack or either breaker, and clearly excludes the idea that he invented what he now claims.

At the time this pamphlet was written, tube condensers and the whole Goulding process was in general use throughout the country. (Aza Arnold's deposition, ints. and ans. 6, 7, p. 257.) Arnold was at that time a patent solicitor in Washington.

Aza Arnold's deposition, int. and ans. 1, pp. 188, 189.

It was important in this pamphlet for Arnold to show to Congress, to as great an extent as possible, the benefits he had conferred on the public

by his alleged inventions. Every inducement operated on his mind to make him state his alleged inventions as broadly and comprehensively as possible, as far as the limits of truth would admit; but he by the strongest implication negatives the idea that he claimed to have invented anything more than ring doffers. He says "all the condensers of wool rovings in use are based upon this invention, and without it could not be used." — p. 261.

Without "what"? He evidently means without having "two doffing cylinders, with alternate rings of card fillets to receive the wool from the main cylinder and deliver the rovings." This function the doffers perform. He means evidently that that was the extent of his invention, viz: the two doffing cylinders, with alternate rings. If the appellants' theory now of Arnold's pretended invention be true, he not only invented the two ring doffers but the condensing, traversing and winding apparatus, both on breakers and finishers, and the whole Goulding invention; and instead of all the condensers being based on his invention, if appellants' theory be true, Arnold should have claimed in this pamphlet that he invented the whole. This pamphlet was introduced by the appellants in evidence, in Mr. Arnold's examination, as part of appellants' case.

Aza Arnold's deposition, ints. and ans. 5, 6, 7, p. 257.

If Arnold invented what the appellants now pretend, why did he not claim it when he wrote this pamphlet, when his purpose and interest was to magnify his inventions as much as possible?

The only rational answer is, he did not invent what is now pretended.

Secondly, whatever Arnold did, was a failure.

Mr. Arnold in 1861 received the circular of the Rhode Island Society for the encouragement of domestic industry, marked "Exhibit 18," (p. 264), and wrote the replies marked "Exhibits 19 and 20," (pp. 265 and 266).

Aza Arnold's deposition, cross-ints. and ans. 25, 26, p. 260.

Mr. Arnold, in this circular, is importuned in the most earnest manner to come forward and give all the information he could, regarding everything that would conduce to the reputation of his native State, Rhode Island (cross-int. and ans. 2, p. 257), in respect to the early introduction of cotton and woolen manufacturing in that State.

He is asked as to the early history of Rhode Island in respect to both woolen and cotton machinery. That circular is dated May 16, 1861. The postscript to it is thus: "*The same information respecting woolen machinery is equally desirable, and is as earnestly solicited.*"

It was signed by the leading manufacturers in Rhode Island. He is urgently solicited to come to the rescue of his native State. He is told in this circular of the widely extended reputation of Rhode Island as *the home* of manufactures. He is also informed in it that there is a peculiar fitness in the inquiry instituted by the Society as other States are instituting similar inquiries in regard to the introduction of machinery in such States, and, as the Committee think, to the prejudice of their own State. He is appealed to, in this circular, to sustain the reputation of his State on this subject, and reminded that the number of those persons familiar with the history on this subject is constantly and sadly decreasing. And as an incentive to give all possible information, he is informed that he would not only help to sustain the reputation of his native State, but that any information he might contribute would be published with proper acknowledgments in the next volume of the Society's transactions.

Exhibit 18, pp. 264, 265.

No appeal could be couched in language more earnest and persuasive than this, and more likely to elicit a statement of what Arnold had done. The supposition is inevitable that, in reply to this most urgent appeal, Mr. Arnold would have disclosed fully his alleged invention, if it ever was a success, or was anything more than an abandoned experiment. His first reply was July 12, 1861.

Exhibit 19, p. 265.

His second reply was Sept. 6, 1861. It was not hurried, but deliberate and matured. Nearly two months elapsed between the date of the

first and the date of the second response. But there is not, from the beginning to the end of either reply, one syllable about any such alleged invention. No mention of it anywhere.

There is but one inference that can be drawn from his silence, and that is, that he never made such invention, and all that he did was a failure and abandoned as such; and that it was not worthy of even the slightest allusion by him.

But Mr. Arnold's own testimony shows he never did invent what is claimed, and his testimony is utterly inconsistent with itself.

It is admitted by him that he had at Pawtucket no woollen machinery except two carding machines, a jack and a jenny, and a picker.

Aza Arnold's deposition, cross-int. and ans. 301, pp. 234, 235.

Two sets of carding machines of two each he says he had at the factory at Smithfield.

Cross-ints. and ans. 198, 202, pp. 223, 224; cross-ints. 209, 210, 211, 212, p. 225; cross-ints. 213, 214, 215, 216, 217, 218, pp. 225, 226.

He admits that Stephen Smith, his partner, *purchased* two of the four carding machines that were at Smithfield, and also that *they were second-hand* machines.

Int. and ans. 54, p. 252.

There were, then, according to his own statement, one set of two each at Pawtucket, and two sets of two each at Smithfield, and one of the two sets at Smithfield was the set previously at Pawtucket (cross-int. and ans. 211, p. 225), and that the other set was purchased by his partner for the Smithfield factory, but where purchased he don't know. He admits also that the set so purchased were second-hand machines. Yet he swore previously on direct examination, that there were three in a set, describ-

ing the process, which he says he used — a first breaker, second breaker and finisher.

Ints. and ans. 6, 10 and 11, p. 192 and 193.

His drawing represents but two carding machines.

Wm. C. Hibbard's deposition, int. and ans. 68, pp. 922, 923.
E. S. Renwick's deposition, int. and ans. 3 and 4, p. 930.

In answer to the 10th direct interrogatory, in which he is asked to describe the carding machines used by him at Smithfield, and state the process of carding by them, Mr. Arnold says: — "One set of them was the same as previously described, and I think that gives the general type of the whole," p. 193.

And we have seen that one of these two sets at Smithfield were second-hand machines, and of course made the short roll, and were the kind then in ordinary use in factories; that he can't tell whether all were in operation or not; that he had no recollection of seeing the set his partner bought, either before they were bought or before they were put in the factory at Smithfield; that he can't tell when they were put in the factory or how soon after he saw them; that he can't state that he saw them within three months after they were put in; that he has no knowledge where they were made or who made them, and that he don't recollect altering them.

Cross-ints. and ans. 210 to 217, p. 225; 224, p. 226; 54, p. 252; 55, p. 252; 56, p. 252.

And yet when asked to describe the carding machines used by him at Smithfield, and to state the process of carding by them, he says: "One set of them was the same as previously described, and I think that gives the general type of the whole."

Int. and ans. 10, p. 193.

Again, he is asked to describe the spinning machine, or machines, used by him at Smithfield, if they differed in any respects from the one which he used at Pawtucket, and in reply, says: "The machine I used at Pawtucket was afterwards one of those used at Smithfield. I have described

it as it was during the first experiments. It was afterwards altered when I used bobbins with head, and drums were furnished in place of the apron roll," etc., etc. "This gives the general type of the spinning. The next Jack we built resembles it, except in having longer frame and more spindles."

Int. and ans. 9, p. 193.

Now on Arnold's own cross-examination it appears that there were but two jacks at Smithfield, and that instead of building the second one it was bought by Arnold's partner at the time he bought the set of second-hand cards before alluded to, so that he did not build a second jack, and that at the time this set of second-hand cards was bought, a jack and jenny to go with it was bought.

These then were the old fashioned jack and jenny, — the jack for making roving from short rolls, and the jenny to spin it. The billy and the jack were synonymous terms.

Cross-ints. and ans. 231, 232, 233, 234, p. 227; 321, p. 238; 239, p. 228.

Mr. Arnold's testimony is utterly unreliable, improbable, and contradictory.

The most that can be claimed for Arnold's alleged invention is, that it was a mere experiment, and abandoned as a failure.

He never patented it.

No trace or vestige of it can be found, and it disappears from the memory of even Arnold during the war of 1812. Its existence became extinct during that war. It is clear upon his own testimony that whatever Arnold did in building this alleged machinery, he did before the fore part of 1813.

Aza Arnold's deposition, ints. and ans. 7 and 8, p. 192.

Draper's testimony shows that what he says he saw, was in 1811 or 1812.

Noah Draper's deposition, ints. and ans. 5, 6, p. 175; cross-ints. and ans. 48, 49, 50, p. 182.

What Waterman T. Dexter says he saw, was in 1812.

Dexter's deposition, ints. and ans. 3, 7, p. 163.

Why did not Arnold patent this alleged invention if it was not a failure? This question is nowhere answered by any testimony of Arnold. The woolen business was so good that he and his associates built a woolen factory at Smithfield after the date of this alleged invention.

Aza Arnold's deposition, int. and ans. 7, p. 192.

To say that the woolen business declined after the peace of 1815, is no answer, because some years elapsed after the date of this alleged invention before peace was declared, and at the date of this alleged invention it could not have been known that the woolen business would not continue good.

The very fact alleged by him that the free importation of goods put down the price of home manufactures, would be an additional reason why he should patent the alleged invention, if it was a success, because the lower the price of goods here, the consequent necessity of invention which would diminish the cost of manufacture. Many factories continued in operation after the declaration of peace.

John Eddy's deposition, int. and ans. 21, pp. 392, 393; ints. and ans. 23, 24, 25, 26, p. 394; ints. and ans. 28, p. 395; ints. and ans. 29 and 30, p. 395.

Dwight Colburn's deposition, pp. 779, 780.

Thomas Musgrave's deposition, ints. and ans. 4, 5, 6, 7, 8, pp. 409, 410.

Aza Arnold's deposition, cross-ints. and ans. 421 to 427, pp. 255, 256.

N. Draper's deposition, cross-ints. and ans. 21 to 28, pp. 179, 180.

Nobody can tell whatever became of this alleged invention.

It was so useless that even Arnold himself cannot tell its fate.

The counsel for appellants endeavored to avoid having appear what was the last which was known of this alleged invention.

Aza Arnold's deposition, ints. and ans. 25, 26, p. 197; cross-ints. and ans. 393 to 400, pp. 246, 247.

Arnold states that Stephen H. Smith informed him seven years before his deposition, more or less, that this machinery which Arnold alleges he had invented had been sold to Jesse Eddy.

Aza Arnold's deposition, ints. and ans. 8, 9, 10, p. 260, 261; cross-ints. and ans. 4, 5, 6; p. 258.

This is the only way that Mr. Arnold can attempt to account for the disposition of this alleged invention, and it is the only clue that is suggested as to its final fate, viz: that Stephen H. Smith informed Arnold some years ago that it was sold to Jesse Eddy.

Arnold admits he never saw it after the fore part of 1815, when he left the concern.

Aza Arnold's deposition, cross-int. and ans. 353, p. 242.

Yet he visited that mill a number of times afterwards.

Cross-ints. and ans. 393 to 400, p. 246, 247.

Now it is clear that Jesse Eddy never had any such machinery, but that he did buy a fulling mill at this Smithfield Factory. This factory was called the Butterfly factory. John Eddy, the witness, was present at this factory when his father bought the fulling mill.

John Eddy's 1st deposition, ints. and ans. 1 to 20 inclusive, pp. 388 to 392 inclusive.

Jesse Eddy's deposition, ints. and ans. 1 to 20 inclusive, pp. 379, 380, 381; also 47 to 51 inclusive, p. 387.

John Eddy's 2d deposition, p. 407.

Richard A Browne's deposition, ints. and ans. 1, 2, 3, 4, 5, 6, 7, 8, p. 433.

Arnold says he commenced in the business of manufacturing wool in 1811, previous to the declaration of war, and continued until sometime in the latter part of 1814, that he then sold out his interest in the Smith Manufacturing Company immediately upon the declaration of peace and had no interest in the manufacture of wool since that time.

Aza Arnold's deposition, ints. and ans. 4 and 5, p. 189.

He says that the Smith Manufacturing Company continued to manufacture wool up to about the time peace took place, at which time he sold out, and that the company continued, he believed, long enough to make up their stock and turned it into a cotton mill.

Aza Arnold's ans. to int. 14, p. 194.

Arnold don't pretend that any person except himself ever used this alleged invention. He says he was very much opposed by the manufacturers whom he consulted on the nature of his operation, and that he still continued with the apron on the roll, as perchance he "*might find occasion for some unknown reason to make a little roving in the old way.*" After thus making his invention, he still adhered to the old short roll process. He says manufacturers condemned his plan.

Aza Arnold's deposition, p. 191.

He says, further, having been lectured so much on the subject, i. e. by the manufacturers whom he says he consulted, that he took the precaution to have several pieces of cloth, woven from the yarn spun, and had it milled and dressed. — p. 191.

How many pieces he don't say, nor whether they were one foot or one inch in size, and he nowhere swears that he did any more than this.

Noah Draper says he was with Arnold a year commencing in March, 1811.

Draper's deposition, cross-ints. and ans. 47, 48, 49, 50, p. 182.

Why, then, if this machinery was a success, did Arnold years afterwards continue to make short rolls?

It is clear he carded short rolls all the time afterwards, both at Pawtucket and Smithfield.

Aza Arnold, cross-ints. and ans. 111, p. 213; 103, 104, 105, 106, 107, p. 212.

Richard A Browne's deposition, p. 433 to 438.

S. W. Olney G. S. Wolney's deposition, p. 438 to 442.

Arnold, then, in 1811, or in or before the spring of 1812, completed whatever was done on his alleged invention.

Yet Waterman T. Dexter swears that Arnold made short rolls during

the whole season from June to October, 1812, and that he, Dexter, was employed by Arnold daily to receive the wool and deliver the short rolls to customers.

W. T. Dexter's deposition, cross-ints. and ans. 3, 4, 5, 6, p. 164.

Dexter also says he saw the spinning machine in the summer season, between June and August, 1812 (cross-ints. and ans. 13, 14, p. 165), and Arnold swears he got his card and made the long roll before he tried any experiment on the jack (p. 191); so that if Arnold's statement be true, he built his card and jack before Dexter delivered to customers the short rolls Arnold made, as Dexter says he delivered them during the carding season of 1812, viz.: from June to October.

All the carding machines Arnold had at Pawtucket were two.

Arnold's deposition, cross-int. and ans. 301, p. 234.

He was daily making short rolls, and could not make them unless he made them on these carding machines, as he had no other carding machines.

Mr. Arnold, finding that his testimony placed him in this dilemma of having sworn that he had invented machinery to make the long roll, and it appearing at the same time that his business was making short rolls, and that he had but two carding machines, and made short rolls on them daily, attempts to avoid this conflict by swearing that when he made short rolls he altered the carding machines.

Aza Arnold's deposition, cross-ints. and ans. 107, p. 212, 111, p. 213, cross-ints. and ans. 257 to 268, inclusive, pp. 230, 231, and cross-int. and ans. 428, p. 256.

He could not have altered his carding machine, if he had one, for making the long roll into one for making short rolls, without great delay and an entire reorganization of the machinery.

Aza Arnold's deposition, cross-ints. and ans. 257 to 268 inclusive, p. 230, 231; cross-ints. and ans. 428, p. 256.

Wm. C. Hibbard's second deposition, ints. and ans. 72 to 78 inclusive, p. 923, 924, 925.

Edward S. Renwick's third deposition ints. and ans. 7, 8, 9, 11, 12, 13, p. 931, 932, 933.

And as the drawing is represented it would have been necessary to have taken out one of the arches, as the fancy arm, by the drawing, is cast on, and that fancy arm would be in the way of the doffer required to make short rolls.

Arnold's deposition, cross-int. and ans. 266, p. 231.

Wm. C. Hibbard's deposition, ints. and ans. 74, 75, 76, p. 924, 925.

E. S. Renwick's deposition, ints. and ans. 11, 12, 13, p. 932, 933.

Now we have seen that one set of cards at Smithfield was a second-hand set, bought by Smith, Arnold's partner.

Aza Arnold's deposition, int. and ans. 54, p. 252.

Why buy for the Smithfield factory a second-hand set of cards used in the short roll process, if the alleged invention of Arnold's was good for anything?

It cannot be answered that they were bought for the purpose of making short rolls for farmers only, because a jack and jenny were bought at the same time — and a jack was used to rope with, and a jenny to spin with. The short rolls, for customers, were made on the cards, and they were not put either on the jack or jenny, but were spun by the customers at their own homes, so that the jack and jenny were bought for the purpose, at that factory, of making on the jack rovings from short rolls, and spinning such rovings on the jenny — the old process. Why then buy this jack and jenny, for the Smithfield factory, years after the alleged invention of Arnold? The only answer that can be given is that they intended to make and did make, at Smithfield, yarn by the old short roll process — they bought the cards to make the short rolls, the jack (which Arnold says is the same as the billy) to make rovings from short rolls, and the jenny to spin them. The very machinery which had been used in the old process was bought. And the reason why they were used at the Smithfield factory, is because Arnold's alleged invention was a failure, and they did not make use of it, but

adhered to and used the old style of machinery — the short roll process.

Aza Arnold's deposition, cross-ints. and ans. 231, 232, 233, 234, p. 227.

Arnold seeing the effect of this fact, viz: the fact that they should buy a set of old-fashioned cards, and a jack and a jenny, after he alleges he made his invention, says the jenny was altered; but on direct examination he did not recollect any alteration whatever, and appreciating, for the first time on cross-examination, the effect of this fact, he there mentions, for the first time, that they altered the jenny. He does not mention this until he sees the effect of the fact, that a jenny would not have been bought unless it was to be used, and it could not be used except in the old process.

Aza Arnold's deposition, cross-ints. and ans. 336, 337, 338, 339, 340, 342, pp. 240, 241.

Mr. Renwick and Mr. Hibbard both show that to alter the jenny as Arnold states would have been an almost entire reconstruction of the machine, and that but very little of the original machine would have been left.

E. S. Renwick's deposition, int. and ans. 10, p. 932; Wm. C. Hibbard's deposition, ints. and ans. 79, 80, p. 925.

Richard A. Browne, who worked for Arnold and his partners at the Smithfield factory (and this was a considerable time after Arnold's alleged invention), testifies that they made only short rolls there. He went to work there within a year after the factory was built. Arnold hired him. His business there was carding and spinning wool. He was there some months. He swears the old process was used there, and no other. He describes it fully. He worked on it himself. He also worked on the billy himself, and, as before seen, the billy was used only in the old process.

Richard A. Browne's deposition, pp. 433 to 438, inclusive.

Granville S. W. Olney, who knew all about this Smithfield factory, lived within half a mile of it when it was being built, and lived in the same place until he went to work in it as a cotton factory in 1815.

He was in this factory often while Arnold and his partners carried on business there — they made short rolls there, and no other; there was no long roll machinery there, but only machinery for making short rolls.

G. S. W. Olney's deposition, pp. 438 to 447, inclusive.

This alleged invention of Arnold, then, was never used at Smithfield. It was a failure at Pawtucket, and hence was never tried or used at Smithfield.

Mr. Browne, who worked at Smithfield in this very factory and on the machinery that was there, proves that it was not used at Smithfield, and so does Olney.

If Arnold's alleged invention had been a success, it would have been used by some person at some time or other. But it never was used by any person, — even Arnold himself abandoned it.

After Arnold sold out his interest in the Smithfield factory, he went on and made woolen machinery, many cards, billies, and jennies, for various persons, but never made any like his alleged invention, but only the old-fashioned short roll machinery, which fact is absolutely inconsistent with the idea that his alleged invention was either a success or an improvement on the old short roll process.

Aza Arnold's deposition, cross-ints. and ans. 149 to 156, inclusive, 158 to 161, inclusive, 165 to 170 inclusive, 302 to 306, inclusive, 328, pp. 216, 217, 218, 219, 220, 235, 239.

Second deposition, cross-ints. and ans. 20, 9, 10, 11, 12, 16, 17, 18, 19, pp. 258, 259.

It is no answer to this for him to say that he constructed the machinery in the manner he did, because it was so ordered. It would not have been so ordered by manufacturers of goods, if his alleged invention had been a success.

It does not appear that he ever mentioned this alleged invention after he left Smithfield to any person except to Wolcott & Wendell, which will be alluded to hereafter. And he swears that both of them are

dead; so that they cannot be produced to show whether any mention of it was ever made to them or not.

Timothy Greene was a partner of Arnold's a short time before the time this alleged invention was made. Arnold hired the shop of Greene.

Aza Arnold's deposition, cross ints. and ans. 67 to 76, pp. 208, 209.

Noah Draper's deposition, ints. and ans. 2, 8, pp. 174, 175.

He was also a partner in the firm of Greene, Tillinghast & Co., for whom Arnold made the old style of machinery, the short-roll process, long after his alleged invention.

Aza Arnold's deposition, cross-int. and ans. 306, 307, 308, 309, 310, 313, pp. 235, 236.

Now if Arnold, Greene's partner, had made any such invention, would not Greene have been likely to have adopted it?

But again, Arnold was superintendent of the machinery for the woolen department at the factories of the Great Falls Manufacturing Company at Somersworth, New Hampshire, the largest factory of the kind then in the United States. Arnold was employed by that Company from January 1825, to the autumn of 1829.

Aza Arnold's deposition, cross-int. and ans. 152, p. 217; cross-int. and ans. 314, p. 236; second deposition, cross-int. and ans. 21, p. 259; first deposition, cross-int. and ans. 24, p. 201.

Arnold drew the plans for the first woolen machinery which was built for the Great Falls Manufacturing Company. The plans were all on the short roll process, and that was the kind of machinery which he built.

Aza Arnold's first deposition, cross-int. and ans. 328, p. 239; cross-int. and ans. 9, p. 258; second deposition, cross-ints. and ans. 27, 28, 29, pp. 261, 262; cross-ints. and ans. 10, 11, 12, 16, 17, 18, 19, 20, pp. 258, 259.

George Bullard's first deposition, ints. and ans. 1, 2, 4, 5, 8, 9, 10, 11, pp. 324, 325, 326.

Exhibits 14 and 15, p. 326.

The identical plans, with Arnold's directions for constructing the machinery written in his own handwriting on the plans, are produced by Mr. Bullard, who worked under these plans.

Mr. Arnold says that he suggested what he calls his plan to Mr. Wolcott and Mr. Wendell, at Great Falls Manufacturing Company; but that it was condemned by Mr. Wolcott; both of them are dead.

Aza Arnold, cross-int. and ans. 316, p. 237.

It seems from George Bullard's testimony and James S. Huntress's testimony that these woolen cards were commenced before Wolcott ever came there.

George Bullard's deposition, ints. and ans. 3, 7, 8, pp. 324, 325.
James S. Huntress's first deposition, ints. and ans. 1, 2, 3, 4, 5, 6, 7, pp. 362, 363; int. and ans. 13, p. 364.

It also appears that Mr. Goulding's machinery, after he made his invention, was adopted at the Great Falls Manufacturing Company while Arnold was there and while Mr. Wolcott was there. Arnold admits that the machinery was altered from short roll to long roll machinery. He says he don't recollect who did it.

Aza Arnold's second deposition, cross-int. and ans. 7, p. 258.
George Bullard, pp. 324 to 330, int. and ans. 41, p. 348; also exhibit 16, p. 330; cross-ints. and ans. 48 to 50, p. 335; cross-ints. and ans. 55, 56, p. 336; cross-ints. and ans. 68, 75, 76, pp. 337, 338; cross-ints. and ans. 94 to 102, pp. 339, 340; cross-int. and ans. 138, p. 344; cross-int. and ans. 149, p. 345; cross-ints. and ans. 156 and 157, p. 346.
Wm. C. Hibbard, ints. and ans. 1 and 2, p. 929.

George Bullard went to work for the Great Falls Company, June, 1825; he staid there till the latter part of December, 1828.

He first commenced to work on machinery, and he was afterwards superintendent of the machine shop where the woolen machinery was built. He knew Aza Arnold; he was there when Bullard left Great Falls. (Arnold, we have seen, went there in the fall of 1824, or January 1825, and left in the autumn of 1829.)

Bullard and Huntress think the woolen machinery was commenced before Wolcott came there. Arnold drew the plans and had the control of the building of the woolen machinery. He ordered the old style, short roll process, to be built. A large quantity of the old style of machinery was built (int. and ans. 30, p. 329). They made nothing but short rolls; and about a year, or a year and a half, before Arnold left, the Company adopted the long roll process, which was Goulding's; Arnold had nothing to do with it (int. and ans. 24, p. 328). Both Arnold and Wolcott were there at the time (ints. and ans. 31, 32, p. 329); and, before Goulding's invention was introduced, there was no machinery there for making the long roll. Bullard, as we have before seen, produces the very plans made by Arnold for the short roll machinery. He also produces a copy of the plan made for the long roll jacks.

George Bullard never knew or heard that Arnold claimed to have invented anything either on the jack or cards.

George Bullard's deposition, ints. and ans. 48, 49, p. 350.

Dana Bullard, who was also a machinist in the employment of the Great Falls Manufacturing Company, and a brother of George Bullard, and worked there under him, testifies to long roll condensers being used there, and while his brother George was there, and he confirms the testimony of George Bullard. Arnold continued there some time after George Bullard left.

Dana Bullard's deposition, ints. and ans. 1 to 14, inclusive, pp. 352, 353; also cross-ints. and ans. 73 and 74, p. 358; and cross-ints. and ans. 41 to 46, inclusive, p. 356.

Dana Bullard never heard or knew that Arnold claimed to have invented anything on cards or jacks.

Dana Bullard, 2d deposition, int. and ans. 1, p. 361.

James S. Huntress was there while Arnold and George Bullard were there, and knows condensers were built there, and the first one was

bought and was built away from the Falls. Huntress worked on the tubes himself.

Huntress' deposition, ints. and ans. 1 to 27 inclusive, pp. 362 to 365; cross-ints. and ans. 1 to 7; pp. 365 to 367; cross-ints. and ans. 19 to 23 inclusive, p. 367; 2d deposition, ints. and ans. 3 to 14 inclusive, pp. 372, 373, 374; cross-int. and ans. 13, p. 375.

Huntress never heard of Arnold's claiming to have invented anything on cards or jacks.

Ints. and ans. 7 and 8, p. 373, 2d deposition.

Daniel T. Willey was a woolen carder at Great Falls Manufacturing Company. Commenced there in 1827 or 1828. George Bullard was there when he went there, and Willey swears that condensers and jacks like Goulding's were there when he commenced. He worked on them, and knows they were there.

Daniel T. Willey's deposition, pp. 856, 857, and 858.

Mr. Arnold states that Wolcott said of Arnold's plan that it would spoil the wool, that it could not be made into broadcloth.

Arnold's deposition, int. and ans, 30, p. 249.

Foster Nowell says he was employed by the Lowell Manufucturing Company at Lowell, from March, 1833, to April, 1864, in carding and spinning woolen carpet yarn. He says carpet warp should be made like worsted, the fibres in worsted thread should be parallel to the length of the thread itself and straight.

Foster Nowell's deposition, ints. and ans. 1, 2, 3, 4, 5, 6, 7, 8, 9, pp. 318, 319; int. and ans. 19, p. 321; cross-int. and ans. 3, pp. 321, 322.

George Bullard says while he was at the Great Falls Manufacturing Company, which was from June, 1825, to December, 1828, that Company manufactured carpets, and that they had twenty or thirty carpet looms in operation; and he says worsted is preferred in all cases for carpet warp.

George Bullard's deposition, ints. and ans. 39, 40, pp. 330, 331.

It is clear that what Arnold states to have been the objection to his alleged invention, would not have been the reason why it was not adopted by Wolcott, if Arnold ever told Wolcott of the alleged invention, and it was a practical invention, as the Great Falls Manufacturing Company made carpetings; and machinery for laying the fibres straight would have been just what they wanted.

Huntress testifies that Wolcott was a man accustomed to try new inventions.

Huntress' deposition, ints. and ans. 8, 9, p. 363.

Certain it is, that if Arnold ever invented what he claimed, some person or other could be produced who used it. It would have been used at Great Falls; especially is this true, as they adopted Goulding's invention very soon after it was patented, and it is quite certain that Arnold never claimed, either to Wolcott or anybody else, that he invented what he now claims. It is also clear, that from and after the time when Arnold made his alleged invention, whenever he built any cards or jacks, he built them on the old plan for making short rolls.

He knew that his alleged invention, whatever it was, was a failure, and all his conduct shows that he considered it a failure.

Arnold says that when he left the Great Falls Company, which was in the autumn of 1829, he made an agreement conditionally with John D. Lang, Joshua Meader, and Isaac Varney. The condition, he says, was if they could get a privilege at North Berwick they would go on and build a wool factory at that place. He says they had bought four shares by contract, that is, had taken a bond for a deed. That there were two more proprietors to be consulted before they took a deed. That the understanding was that he should build the machinery after his method, which he calls taking off the wool lengthwise in perpetual rovings from his two-doffer machine.

Aza Arnold's deposition, ints. and ans. 41, 42, 43, pp. 250, 251.

It will be recollected here, that at this time when Arnold says he left the employment of the Great Falls Manufacturing Company, viz., the autumn of 1829, Mr. Goulding's patent had been granted and in existence three years, and that Mr. Goulding's machinery had been adopted at Great Falls.

This statement of Mr. Arnold, however, is not true.

We produce as witnesses both Varney and Lang. Meader is dead.

Mr. Varney denies that there ever was any arrangement, conditional or otherwise.

Varney's deposition, ints. and ans. 1 to 11, pp. 781, 782.

Mr. Lang swears that he went into the business of manufacturing wool in 1828, at North Berwick — that he obtained condensers and jacks just like Goulding's; that there was some loose talk about forming a company, *but that it was not until after he had taken Arnold into his mill and shown him this very Goulding machinery, and that Arnold made no claim whatever that he had invented any part of the condenser or jack.*

John D. Lang's deposition, ints. and ans. 1 to 15, inclusive, pp. 852, 853; cross-ints. and ans. 1, 2, p. 854; int. and ans. 21, p. 855; cross-ints. and ans. 15 to 18 inclusive, p. 856.

Wm. C. Hibbard's second deposition, int. and ans. 3, p. 930.

Edward S. Renwick's third deposition, int. and ans. 35, pp. 937, 938.

Lang shows that nothing was done about forming a company with reference to Arnold, only general, loose talk about manufacturing. That no attempts were made to secure land or water privilege with reference to Arnold, and no negotiations with reference to purchase of land or water privilege, so far as Arnold was concerned.

Cross-ints. and ans. 15 to 18 inclusive, p. 856.

But the important fact is, that whatever loose talk there was about forming a company, was after Lang had put in operation the Goulding machinery, and had shown it to Arnold, and Arnold made no suggestion whatever that he invented it or any part of it.

Varney says that between 1834 and 1840, he heard Arnold had made some invention, but he don't know in what.

Varney's deposition, ints. and ans. 12 to 15 inclusive, p. 782.

The invention here spoken of by Varney, was doubtless the one referred to by Lang, which was an invention, claimed by Arnold, on a loom at the Great Falls Manufacturing Company.

Lang's deposition, int. and ans. 15, p. 853.

The very corporation with which Lang is connected, (int. and ans. 16, p. 853), — North Vassalboro' Company — of which his son, T. S. Lang, is agent, (ints. and ans. 17, 18, p. 854), has paid the royalty under the Goulding patent.

Lang never would have done this if Arnold had claimed away back in 1828, to have been the inventor.

This company paid the royalty July 30, 1863, on six jacks; Exhibit D[1], p. 800. April 26, 1864, on two jacks and four sets of cards; p. 803. Again, July 14, 1864, on three finishers; p. 808. Again, Sept. 16, 1864, on one finisher; p. 808. Again in Nov. and Dec. 1864, on one first and second breaker and two finishers; p. 809.

Arnold's alleged invention then, whatever it was, was a failure, and so treated by himself.

Arnold pretends that he had seen most of the machinery making up his alleged invention, before the time when he says he made his alleged invention.

Arnold's deposition, ints. and ans. 16, 17, 18, pp. 194, 195; cross-ints. and ans. 346, 347, 348, 349, 350, 351, p. 242.

He says he had seen most of the devices used for some years in cotton factories. He says he had not seen the two-doffer carding machine. The contra twist tube, he says, he had not seen in the same form. He says, using his own language, "all the other devices here exhibited I believe were common in all the cotton factories that I was acquainted

with. The contra twist tube was, in a measure, comprised in the cotton roving machine, but with some variation."

Int. and ans. 16, p. 194.

He further states that the first roving machines used in the first cotton factory, built on this continent, were constructed and used at Pawtucket up to 1810 or 1812, and that the most conspicuous part of that machine, when seen in operation, was a series of tin cans, revolving on their vertical axis. These cans might be eighteen inches long, and from six to eight inches diameter, the top of the can terminating in a trumpet shape tube through which the rovings were drawn by a pair of small rollers, located inside the can. These rollers drew the roping down through the tube, while the can, revolving on its axis, gave the twist. So far, he says, he considers that the trumpet shaped tube varied a little from the form which he adopted. He further says, the other parts of the machine being common, they need no description.

Int. and ans. 17, pp. 194, 195.

He is then asked what other parts he refers to, and replies the device of winding roving upon spools or bobbins, so called, by placing the bobbin on the tob of the drum or cylinder, in order to give the surface of the bobbin a uniform velocity while winding up the roving. He also says that he referred to the use of the kreel, as he says all bobbins when filled with roving, were universally placed in kreels, in order to allow the roping to be drawn off to supply the spinning frames. He says he also refers to the device of taking the fibre from carding machines in the form of rovings or perpetual slivers; that was common, he says, in all manufactures of cotton, and the condensing the fibre by drawing it through a trumpet or guide.

Int. and ans. 18, p. 195.

This testimony of Arnold was probably introduced to attempt to account for his inventing his alleged machinery with the confessedly very limited knowledge that Arnold had of woolen machinery; as

Arnold admits that the roping jack, which he says he built, was the first woollen machinery which he ever built.

Arnold's deposition, cross-ints. and ans. 293, 294, 296, 297, p. 234.

It is admitted by Arnold that these cans, which, in a measure, he says comprised the contra twist tubes, were eighteen inches long, six to eight inches in diameter, terminated in a trumpet-shaped tube, and had a pair of rollers located inside of them; and that this trumpet-shaped tube, as he calls it, was a solid part of the can, and made the neck of the can; also, that the cans had doors; and this tubed-shape neck had no motion distinct from the can; it was soldered on to the cans and that there were from twelve to twenty of these large-sized cans on the cotton-roving machine.

Arnold's deposition, int. and ans. 17, p. 194; cross ints. and ans. 346, 347, 348, 349, 350, 351, p. 241, 242.

Abel H. Merriam's first deposition, ints. and ans. 1 to 8, p. 859, 860; second deposition, ints. and ans. 6, 7, p. 904.

Now, both Wm. C. Hibbard and Edward S. Renwick swear that the contra twist tube was not in any manner comprised in the cotton-roving machine described by Arnold, and that the operation of the revolving can in the roving machine was not in any respect like the operation of condensing tubes combined with a carding machine as represented by Arnold's drawing, and could not have been used in woolen machinery.

Wm. C. Hibbard's second deposition, ints. and ans. 51, 52, 53, 54, pp. 918 to 920, inclusive.

Edward S. Renwick's deposition, ints. and ans. 24, 25, 26, 27 28, 29, pp. 935, 936; int. and ans. 5, p. 931; int. and ans. 2, p. 930.

If Arnold's statement be correct, he had seen in cotton machinery all the devices which he adopted in his alleged invention except the two doffers.

We have seen that one device which he describes is utterly unlike his drawing, and could not be used on woolen machinery.

The next he refers to is the winding block.

Int. 18, p. 195; also, p. 191.

Samuel Greene, one of the defendant's witnesses, an old cotton manufacturer, describes this winding block, and so does Abel H. Merriam, another old cotton manufacturer.

The winding block was a separate and distinct machine by itself, and the cotton in being wound on it was guided by the hand so as to wind evenly, and the length of the spool on the winding block between the heads of the spool was about six inches.

S. Greene's deposition, ints. and ans. 11, 12, 13, pp. 169, 170; cross-ints. and ans. 31 to 38 inclusive, p. 173.

Abel H. Merriam's deposition, ints. and ans. 8 to 14 inclusive, pp. 860, 861; also ints. and ans. 1 to 8 inclusive, pp. 859, 860.

Arnold nowhere shows the winding block or anything like it in his drawing.

Wm. C. Hibbard's second deposition, ints. and ans. 51, 52, 53, 54, 55, 56, 57, 58, pp. 918, 919, 920.

Edward S. Renwick's third deposition, ints. and ans. 14 and 15, p. 933.

Arnold also says that in cotton manufacture all bobbins when filled with roving were placed in kreels, in order to allow the roping to be drawn off to supply the spinning frames, *not carding machines*, but spinning frames (int. and ans. 18, p. 195,); which Mr. Hibbard testifies was entirely different from what Arnold describes in his drawing as part of his alleged invention.

Wm. C. Hibbard's deposition, int. and ans. 53, p. 919.

Arnold says guides were used to cotton machines to conduct the cotton sliver or roving both to the *drawing frames, and speeders and spinning frames.*

Arnold's deposition, ints. and ans. 66, 67, p. 254.

Mr. Goulding never used them for any such purpose, and Mr. Goulding nowhere claims them as a specific device or separately, but only as one of the elements in his combination.

Arnold also says the device of taking fibre from cotton carding machines in the form of rovings, and condensing it through a trumpet or guide was common.

Int. and ans. 18, p. 195.

Now the tube which Arnold refers to was a large tube, one-half or three-quarters inch diameter at its smallest end, and was stationary, and the cotton after passing through it went into cans and there was only one such tube on each machine.

Abel H. Merriam's second deposition, ints. and ans. 1 to 8 inclusive, pp. 904, 905.

But Arnold nowhere pretends that the condensing of the sliver by means of a *revolving tube*, which twisted and untwisted the sliver, and winding it as it was formed by distributing it backwards and forwards on a bobbin on the periphery of a drum, was known or used in cotton machinery. What is described as in use in cotton manufacture is entirely different.

Wm. C. Hibbard's second deposition, last paragraph of 53 ans. pp. 919, 920.

Edward S. Renwick's third deposition, int. and ans. 29, p. 936.

The defendant produces no expert or witness except Arnold, to show that there was any similarity whatever between what Arnold claims he invented, and the devices in use in cotton machinery, and this testimony as to the devices in cotton machinery was evidently introduced to show that Arnold, in making the invention which he pretends to have made, did not have much to invent. It became expedient, in order to attempt to give an air of some possible plausibility to the story, to show, as Arnold never made any woolen machinery to any extent before the time of his alleged invention, that he adopted some devices then in common use, rather than to have claimed for this novice in woolen machinery this new invention, which of necessity would have required a large ex-

perience and practical knowledge of woolen machinery, as well as great inventive genius.

There is no device or art which is described by Mr. Goulding in his patent as a part of his invention to be found in the parts of cotton machinery enumerated by said Arnold as being in common use at the time when he pretends to have made his alleged invention, or to be found in the parts of cotton machinery enumerated by the witnesses Greene or Merriam, or to be found in any cotton machinery.

What Arnold then claims he invented is entirely different from what he represents in the drawing which he introduces as a sketch of his invention. Arnold nowhere is asked, and nowhere swears that his alleged invention was like Goulding's.

We have already seen that no person adopted it; that it was really never used; that no vestige of it can be found; nor is any light afforded to show what became of it. That he never made anything like it afterwards, but went on afterwards and constructed the short roll machinery.

But what Arnold alleges he invented must have been of necessity a failure.

Arnold nowhere describes any device that he used for winding except the winding block. He says: "*I should have remarked that rovings in the cotton mills always had to be wound on bobbins by laying the drum on the surface of a drum, or winding block. I also brought the drum to the front of my card, and so adjusted the movements as to enable them to wind up the rovings,*" etc.

Arnold's deposition, p. 191.

Again, on p. 192, he says, "I also adopted the trumpet-tube condenser on the breaker card, and drew the sliver through the trumpet *and then wound it on to a bobbin lying on the surface of the winding block the same as cotton is wound on the bobbin.*"

He thus states that he took the machine, called the winding block, to the front of the carding machine.

The winding block could not be used practically and with any success on his alleged machinery. It would have been a failure.

Wm. C. Hibbard's second deposition, ints. and ans. 55 to 65 inclusive, pp. 920, 921, 922; int. and ans. 71, p. 923.

Edward S. Renwick's third deposition, ints. and ans. 14 to 23 inclusive, pp. 933, 934.

Arnold could not have used the cans with the trumpet-shaped tubes as spoken of by him.

Wm. C. Hibbard's second deposition, ints. and ans. 85 and 86, p. 929.

Arnold nowhere shows any tube that he used which could practically work on the finisher.

Edward S. Renwick's third deposition, ints. and ans. 30 to 34 inclusive, also 36; cross-ints. and ans. 1 and 2, pp. 936, 937, 938; also Exhibits 39 and 40.

Wm. C. Hibbard's second deposition, int. and ans. 81, p. 926; cross-ints. and ans. 5, 6, and ints. and ans. 83, 84, 85, 86, pp. 928, 929.

A bail and cross-bar on the tube on the finisher or its equivalent are indispensable, as Renwick testifies from an actual test made by him.

Edward S. Renwick's deposition, int and ans. 31, p. 936.

Wm. C. Hibbard's second deposition, int. and ans. 81, p. 926.

If it be claimed that Arnold had a tube on his alleged finisher, small enough in the bore to impinge on the roving (and there is no pretence that he did), we say that it could not work successfully, as the roving is of such delicate nature that the bore of the tube impinging on the roving and the apparatus drawing it forward at the same time would break it, and the witnesses so testify.

E. S. Renwick's third deposition, cross-int. and ans. 1, p. 938.

Wm. C. Hibbard's second deposition, int. and ans. 81, p. 926.

But upon Arnold's testimony he used the same tube which was used in cotton machinery. The bore of such tubes we have seen was ½ to ¾-inch at the smallest end.

Abel H. Merriam's second deposition, pp. 904, 905.

A tube with a much smaller bore than that, as shown by Mr. Renwick, is a failure on the finisher cards, unless provided with a bail and cross bar or its equivalent, and Arnold don't pretend to have had any such appliance or any equivalent. — Exhibit 39.

Edward S. Renwick's third deposition, ints. and ans. 31 to 34, inclusive, pp. 936, 937.

The tube which was used at Great Falls Manufacturing Company by Bullard, was equivalent to tube with bail and cross bar; its necessity was appreciated and known there.

George Bullard's deposition, cross-int. and ans. 76, pp. 337, 338.
Wm. C. Hibbard's second deposition, int. and ans. 2, p. 929.
Edward S. Renwick's third deposition, int. and ans. 36, p. 938.

No mechanic could, from Arnold's description in his deposition, have constructed what Goulding invented.

Wm. C. Hibbard's second deposition, int. 67 and ans. p. 922.

The evidence therefore we submit shows conclusively not only that Arnold's alleged invention was a failure, but also the reasons why of necessity it must have failed, and further, that the devices which Arnold says, in his deposition, he used, and which he swears were common, are unlike those used by Goulding.

Arnold did not recollect correctly his partners at Smithfield.

The winding block could not be used practically and with any success on his alleged machinery. It would have been a failure.

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Arnold did not recollect correctly his partners at Smithfield.

On March 2, 1865, he testifies that Samuel Butler and Daniel Butler were two of his partners.

Arnold's deposition, int. and ans. 12, pp. 193, 194; cross-int. and ans. 401, p. 247.

April 1, 1865, he says they were not partners, and he wishes to substitute for their names the names of Samuel Aborn and Daniel Aborn.

Second deposition, int. and ans. 1, pp. 256, 257; cross-int. and ans. 3, p. 258.

Arnold does not stand in this case in the mere character of witness, but he has been actively engaged for weeks in hunting up witnesses for the appellants. What his compensation is to be he says he does not know, but he expects to be paid for what he does. It is clear that he is in the pay of the appellants.

Aza Arnold's deposition, cross-ints. and ans. 406, 407, 408, 409, 410, pp. 247, 248; second deposition, int. and ans. 15, p. 262.

He is employed by this combination, who are defending this case, and Mr. Edward Harris, of Rhode Island, is one of them.

A. G. Greeley, the appellants' treasurer, shows that there is such combination.

A. G. Greeley's deposition, ints. and ans. 6, 7, 8, 9; p. 47.

Arnold substantially admits that he told Jonathan Dennis, Jr., in Washington, that the manufacturers were going to try and break down Goulding's patent, and that he would help them do it if they would pay him for it.

Arnold's second deposition, cross-int. and ans. 30, p. 262.

Then, in the afternoon, after some hours had elapsed after his deposi-

tion had been completed and signed, Mr. Arnold comes before the examiner and attemps to alter his testimony. — p. 262.

Arnold's second deposition, cross-ints. and ans. 32, 33, 34; ints. and ans. 16, 35, 17; cross-int. and ans. 36, pp. 263 and 264.

Arnold has been employed by the manufacturers to do all in his power to invalidate the patent, and has a direct pecuniary interest in the result.

Mr. Arnold's testimony is in direct conflict with his conduct within a very few years.

Arnold admits that he may have told Isaac Thayer, in Washington, in 1862, that he hoped Goulding might succeed in getting his patent extended, as he ought to get it.

Arnold's second deposition, cross-ints. and ans. 23 and 24, p. 260.

Isaac Thayer testifies that Arnold did say so.

Isaac Thayer's deposition, ints. and ans. 20, 21, 22, 23, p. 761.

Mr. Thayer was then in Washington, assisting Mr. Goulding in getting an extension.

Arnold, after leading a roving, unsettled life, about twelve years ago, adopted the practice of a patent solicitor in Washington.

Pages 201 and 202.

Arnold's whole life and conduct since the time of his alleged invention, is utterly inconsistent with the idea that he ever made the invention alleged. And human conduct here speaks a more potential voice and gives more reliable testimony than the trumped-up story of this needy adventurer.

He swears Goulding's was an improvement on his alleged invention.

Aza Arnold's deposition, ints. and ans. 2, 3, 4; p. 257.

But this is not the only case in which Arnold is trying to defeat a patent.

He claims he invented, during the war of 1812, a file machine like that patented in 1851 by Crum, the only difference being that Arnold says his *own* was *better* than Crum's.

Arnold's deposition, ints. and ans. 30, 34 to 42, inclusive, pp. 203, 204; ints. and ans. 50, 51, p. 205.

Arnold swears that he has been in the habit of testifying as expert in patent causes, but when he attempts to state in what causes, his memory fails him in a singular degree.

Pages 202, 203, 233.

Arnold says that he once saw a kreel used in feeding a card in the Pawtucket Manufacturing Company's Mill, at Pawtucket, Massachusetts, in 1810 or 1811.

Int. 19, p. 195.

[*This evidence was objected to as no notice of it was given in the answer.*]

The allegation in the answer is "That the same was publicly made and used in the factory of said Arnold, in Pawtucket, in the States of Rhode Island and Massachusetts, and in other places in Pawtucket," etc.

Answer, p. 20.

The consideration of this alleged machine is then, we submit, not open in this case; but if the Court shall consider the evidence admissible, then we respectfully submit that the alleged kreel was to feed *to a machine combining carding and spinning in one machine, and that cotton*

wicking; that Arnold admits that he never saw it but once, although he was there many years.

Aza Arnold's deposition, cross-ints. and ans. 357 to 365, inclusive, p. 243; cross-ints. and ans. 365 to 377, inclusive, p. 243 to 245.

Wm. C. Hibbard's deposition, int. and ans. 82, p. 926.

No trace or vestige of it is shown.

No other witness is produced as to this alleged machine.

Arnold says the machine had a number of spindles and flyers. It cannot be pretended that this is anything like Goulding's.

Mr. Stetson, defendant's expert, although examined a long time after Mr. Arnold, is not asked whether this alleged machine contained either of the combinations recited as claimed by Goulding, as he would have been could he have so testified.

Arnold has made the most improbable and inconsistent statements. His conduct repels the idea that he was acquainted with the improvements until after they were invented by Goulding. And it needs no argument to show that if this needy patent agent had been employed by us instead of by the appellants, he would have been as earnest in sustaining Goulding's patent, as he was in declaring, in 1862, that Goulding ought to have a renewal of his patent, and he hoped he would get it.

Isaac Thayer's deposition, ints. and ans. 20 to 23, inclusive, p. 761.

Aza Arnold's deposition, cross-ints. and ans. 23, 24, p. 260.

DEFENCE. THAT WINSLOW WAS THE INVENTOR, ETC.

Sixth. Another defence set up as stated in the language of the answer is as follows, viz: "This defendant denies that the said Goulding ever bestowed any ingenuity upon the invention or improvement mentioned in either of the Letters Patent aforesaid, and alleges that the improvements therein described were invented and applied by one Edward Winslow, then of Dedham, from whom said Goulding first obtained knowledge of the same, and fraudulently and surreptitiously obtained a patent on the 15th day of December as aforesaid, for that which he well knew was the invention of said Winslow, at and before the application by him for a patent, as set forth in said bill."

Answer. pp. 15 and 16.

1. The patent is *pri. fa.* evidence that Goulding was the original and first inventor of the thing patented.

2. The answer charges a *fraudulent* and *surreptitious* appropriation by Goulding of Winslow's invention, and fraud is to be proved by the party alleging it.

3. To sustain this burthen it is not sufficient for the appellants to prove that Winslow, while a hired workman of Goulding, suggested mechanical means of carrying some part or parts of Goulding's plan into effect; *he must prove that the entire plan of the invention, as described by Goulding in the original letters patent of December,* 15, 1826, was the *sole* invention of Winslow; for the answer does not set up a joint invention by Goulding and Winslow, but a several invention by Winslow, and a fraudulent and surreptitious appropriation of the entire invention by Goulding.

Pitts *vs.* Hall, 2 Blatch. R. 234.
Alden *vs.* Dewey, 1 Story's R. 338, 339.
Dixon *vs.* Moyer, 4 Washington, 71, 72.
Teese *vs.* Phelps, McAllister, 48.
Story J. in Washburn *vs.* Gould, 3 Story, 133.
Webster's P. C., 132, Note E.
Allen *vs.* Rawson, 1 M. G., and Scott, 574 to 577.
Eyre *vs.* Potter, 15 How. 56.

As to the danger of this kind of evidence, even where the supposed occurrences are recent, see

Alden *vs.* Dewey, 1 Story's R. 339.
Pennock *vs.* Dialogue, 4 Wash. R. 544.

And as to the views which a Court of Equity takes of attempts to overturn existing titles by such evidence as the appellants rely on, after the lapse of forty years, see

Badger *vs.* Badger, per Clifford J., in Cir. Ct. U. S., Mass. Dis., and S. C. on Appeal, 2 Wallace, 87.

Mr. Goulding has been inventing all his life. When he commenced business at Halifax in 1820 his purpose was to get rid of the billy and short rolls entirely.

John Goulding's deposition, int. and ans. 13, p. 459.

He had been experimenting on woollen machinery before that, and continued experimenting at Halifax, and finally at Dedham he succeeded in completing his invention. His experiments covered a long period of time, and were very numerous.

John Goulding's deposition, pp. 457 to 470 inclusive, also cross-int. and ans. 34, p. 496; cross-ints. and ans. 96, 97, 98, 99, 106, pp. 501, 502, 503; cross-ints. and ans. 133, 134, 143, 148, pp. 506, 507; cross-ints. and ans. 151, 152, 153, 154, 167, 168, pp. 507, 508, 509, 510; cross-ints. and ans. 248, 250, 252, 253, p. 518; cross-ints. and ans. 268, 269, 270, 271, 272, pp. 520, 521; cross-int. and ans. 274, p. 522; cross-int. and ans. 292, p. 524; int. 210, p. 635.

Mr. Goulding was born in 1793, and has worked on machinery, both building and using it, ever since he was old enough to do anything. He worked at it under his father till he was seventeen years old.

John Goulding's deposition, ints. and ans. 3, 4, 5, 6, 7, pp. 457, 458.

Wm. Farnsworth, Goulding's foreman, and who was with him at Chelmsford, and Halifax, and Dedham, also testifies to his experiments.

Wm. Farnsworth's deposition, ints. and ans. 1 to 21 inclusive, pp. 730, 731, 732, 733.

Rufus Melvin, who was also at Halifax at work for Mr. Goulding, and afterwards at Dedham, till April 1, 1824, testifies to Goulding's experiments.

Rufus Melvin, ints. 1 to 28, inclusive, pp. 740 to 742, inclusive.

He left Goulding before Goulding got his invention completed. He left April 1824.

Mr. Goulding swears that he himself was the first and original inventor, and always believed himself to be so.

John Goulding's deposition, ints. and ans. 43, 44, 45, 46, 47, pp. 470, 471; int. and ans. 170, p. 491.

We have seen under this defence that it is incumbent on the defendant to prove that Winslow was the *sole* inventor, etc.; but were this otherwise, a careful examination of the proof will show that Winslow was neither the sole nor a joint inventor, and had absolutely nothing to do with the invention.

We will now proceed to consider the evidence bearing upon this point.

It is claimed by the appellants that Winslow suggested the use of the spool and drum.

John Goulding's testimony is full and explicit on this subject, and shows a most natural and ordinary course of invention, and that he Goulding himself, was the real inventor, and that Winslow made no suggestion whatever to him, either of the spool and drum or of anything else.

John Goulding's deposition, int. and ans. 49, p. 471; int. and ans. 171, p. 492; ints. and ans. 64 to 74, inclusive, pp. 473 to 476, inclusive; cross-ints. and ans. 471, 472, p. 542; cross-ints. and ans. 483 to 501, inclusive, pp. 544 to 547, inclusive; ints. and ans. 188 to 192, inclusive, pp. 631, 632; ints. and ans. 225, 226, 227, p. 637; ints. and ans. 81 to 85, inclusive, p. 477; ints. and ans. 185, 186, pp. 630, 631: cross-ints. and ans. 553 to 563, inclusive, pp. 553, 554; cross-ints. and ans. 571, 573, p. 555; int. and ans. 193, p. 632; cross-ints. and ans. 576, 577, p. 556; cross-ints, and ans. 1079, 1080, 1081, p. 643.

Winslow was a workman in Goulding's employment. He did not enter Goulding's employment until a long time after Mr. Goulding had been making experiments. Goulding was at Dedham when Winslow entered into his employment.

John Goulding's deposition, ints. and ans. 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, pp. 471, 472.

George L. Pierce's deposition, ints. and ans. 2, 3, 4, 5, p. 86; cross-ints. and ans. 13, 14, 15, 16, 21, p. 89.

Wm. Farnsworth's deposition, ints. and ans. 22, 23, 24, 25, 26, 30, p. 733.

Rufus Melvin's deposition, ints. and ans. 19, 20, 21, 22, 26, pp. 741, 742; cross-ints. and ans. 12, 13, 14, p. 744. [Melvin left Goulding's employment April 1, 1824. — int. and ans, 18, p. 741.]

John D. Cooper's deposition, cross-ints. and ans. 7, 8, 9, p. 97, 98; cross-int. and ans. 42, p. 100.

Edward A. Winslow's deposition, cross-int. and ans. 78, p. 78.

Winslow's wages were about $1.50 per day.

John Goulding's deposition, int. and ans. 54, 55, p. 472.

Wm. Farnsworth's deposition, int. and ans. 25, p. 733.

John D. Cooper's deposition, cross-int. and ans. 8, p. 97.

He was a blacksmith. He did not profess any skill in wood-work. He did anything that Mr. Goulding saw fit to set him about, working wholly in iron.

John Goulding's deposition, int. and ans. 52, pp. 471, 472.

Wm. Farnsworth's deposition, ints. and ans. 24, 26, p. 733.

Rufus Melvin's deposition, int. and ans. 21, p. 741.

Farnsworth was the foreman of the machine shop in Mr. Goulding's absence.

John Goulding's deposition, int. and ans. 59, p. 473.

Rufus Melvin's deposition, int. and ans. 22, p. 742.

Wm. Farnsworth's deposition, int. and ans. 21, pp. 732, 733.

Winslow was an under workman, and had no charge of the machine shop.

Wm. Farnsworth's deposition, int. and ans. 30, p. 733.
Rufus Melvin's deposition, int. and ans. 26, p. 742.

Wm. Farnsworth made the first drum that was made for use on the jack, and he got all of his directions in relation to it and other work from Mr. Goulding, and Mr. Goulding alone.

Wm. Farnsworth's depositions, int. and ans. 21, p. 732, 733.

Mr. Goulding directed as to all the work which was to be done at his shop, either as to building or altering machinery.

John Goulding's deposition, int. and ans. 59, p. 472, 473.

When Winslow left Goulding's employment he was on bad terms with Goulding. He left June 16, 1825.

George L. Pierce's deposition, int. and ans. 5, p. 86.
John Goulding's deposition, int. and ans. 141, p. 486; cross-ints. and ans. 900, and 901, p. 603, and 604; int. and ans. 228, p. 638.
George L. Pierce's second deposition, ints. and ans. 15, 16, p. 1118; cross-ints. and ans. 1 to 12, inclusive, p. 1118, 1119; cross-int. and ans. 22, p. 1120.

George L Pierce, one of the main witnesses for appellants left at the same time. He was a brother-in-law of Winslow, Winslow married his sister, and he married Winslow's sister.

George L. Pierce's first deposition, ints. and ans. 3, 4, 5, p. 86; cross-int. and ans. 10. p. 88; second deposition, cross-ints. and ans. 12 and 14, p. 1119.

Pierce was in the employment of the Middlesex Mills at the same time Winslow was, and is so employed still.

George L. Pierce's deposition, int. and ans. 1, p. 86; cross-ints. and ans. 22, 24, p. 89; 34, 35, 36, p. 91.

E. A. Winslow's deposition, cross-ints. and ans. 123, 124, 125, p. 85.

It is for the interest of this company to defeat this patent. They use the Goulding invention, and are a part of the combination who are defending this suit.

George L. Pierce's second deposition, cross-ints. and ans. 18 to 21, inclusive, p. 1120.

A. G. Greeley's first deposition, ints. and ans. 6, 7, 8, 9, p. 47; second deposition, cross-int. and ans. 2, p. 162.

Their machinery is old, and if they defeat this patent they will not have to pay royalty on what new machinery they may get.

George L. Pierce's third deposition, cross-ints. and ans. 52, 53, p. 1401, cross-int. and ans. 64 p. 1402.

E. A. Winslow's deposition, cross-ints. and ans. 68, 69, p. 77.

Although George L. Pierce, according to his own testimony, entered Mr. Goulding's employment in May 1824, and left, as he says, June 17, 1825.

George L. Pierce's second deposition, cross-int. and ans. 26, p. 1121; first deposition, int. and ans. 2 and 3, p. 86.

He does not testify to Winslow's doing anything whatever in relation to the invention, although he was there all the time from May, 1824; but he is called to testify after the lapse of upwards of forty years to a loose *conversation* alleged to have occurred between Mr. Goulding and Winslow. Pierce does not pretend to give the whole conversation, and what led to the conversation he don't know.

George L. Pierce's first deposition, int. and ans. 6, pp. 86 and 87; cross-int. and ans. 32, p. 90.

He attempts to swear that certain specific language was used.—Cross-int. and ans. 26, p. 90.

To recollect specific language after the lapse of forty years is an impossibility. It is not necessary to suggest that conversations are the most suspicious and unreliable of all kinds of evidence even when alleged to be recent; but here where they are alleged to have occurred upwards of forty years ago, not the slightest reliance can be placed upon any such evidence.

The facility with which conversations can be either manufactured or distorted, the necessity of knowing all that was said, the occurrences which gave rise to the conversations, and the circumstances under which the conversations occurred, the inability of human memory to retain the precise language that was used, the proverbial fact of the different versions which different witnesses give even of recent conversations, the radical change in meaning which even the slightest transposition of language will sometimes make, all concur in showing that evidence of conversations is the most unsatisfactory testimony upon which a court of justice can act.

Mr. Goulding distinctly denies that any such conversation as that testified to by Pierce ever occurred.

John Goulding's deposition, int. and ans. 139, p. 485; int. and ans. 140, p. 486; cross-ints. and ans. 1008 and 1009, pp. 619, 620.

This witness Pierce, if Winslow did invent anything, would have been likely to have known it; but he does not testify that he knew of Winslow's doing one single thing in relation to the invention, and it is remarkable that instead of testifying to facts, he is called to testify to loose alleged conversation more than forty years old. A paper is produced to this witness which purports to be a statement of Winslow, that on May 20, 1825, Mr. Goulding admitted, in the presence of Pierce, that he, Winslow, was the inventor, and made the first application of the surface drum to unwind the sliver from the spool.

Exhibit F[1], p. 1122.

This paper is clearly inadmissible; upon no rule of evidence can it be introduced.

Pierce don't and wont testify that he heard any such admission, and the counsel did not ask him whether he heard such admission, but first puts a question which is objected to, and then withdraws it, and then puts one asking Pierce whether or not he heard *a* conversation between Goulding and Winslow at or about the time that paper was written.

George L. Pierce's second deposition, int. and ans. 6 and 7, p. 1117.

But he does *not venture to ask him what the conversation was.* Why did he not ask Pierce what the conversation was, if Pierce could have testified that such conversation contained any such admission?

There is no evidence where this paper came from, nor when it was made, nor where it has been.

Pierce's first deposition was given March 11, 1865.— p. 86.

Edward A. Winslow's first deposition was given March 10, 1865.— p. 68.

This paper is never referred to or produced until Sept. 6, 1865.

This same witness, Pierce (as part and parcel of the scheme of the manufacturers to endeavor to invalidate this patent), testified in his first deposition, that he set up in the spring of 1825, under Mr. Goulding's directions, a jack and two cards for Truman Clark, at Walpole, and that the cards had the surface drum, and the jack, too, he thinks, and that the cards were for making the perpetual roll.

Geo. L. Pierce's deposition, ints. and ans. 7, 8, 9, 10, p. 87; cross-int. and ans. 3, p. 88.

Now we prove by testimony about which there can't be a shadow of doubt, that this statement of Pierce is utterly and wholly untrue. Peirce left Goulding, June 17, 1825. Int. 3, p. 86.

Charles Mann's deposition, p. 745 to 751 inclusive.
Oliver Ellis' deposition, p. 752 to 755 inclusive.
Mason Pierce's deposition, p. 755 to 758 inclusive.
Truman Clark's deposition, p. 879 to 882 inclusive.

All these witnesses show that the long roll machinery was not sent to Clark's until 1828, and that Pierce had nothing to do with it, but a man

by the name of Upham assisted Goulding in setting up this machinery at Clark's.

Pierce's statements are utterly inconsistent with what he told David Lane, in 1841 or 1842.

Mr. Lane's testimony is introduced, not to show that what Pierce claimed in his presence Winslow did was in fact done by Winslow, but to show Pierce's version at that time of the extent of Winslow's claim.

Pierce told Lane that Goulding had completed the invention so that he got the spool and drum operating on the cards, and got the spool and drum on the jack, and seemed to be stopped about getting the roving off on the jack; and that Winslow suggested to him to get it off the jack the same way he put it on; and Pierce said that was all Winslow suggested. Pierce, at the same conversation, said that Goulding would have thought of it in a little while himself. Pierce also lauded Goulding's invention as a great invention, and said he never got his pay for it.

David Lane's deposition, p. 766, 767, 768.

Pierce was asked previously if he had a conversation on this subject with Lane.

Pierce's first deposition, cross-int. and ans. 38 to 42, inclusive, p. 91.

When Pierce's attention is called, on September 6, 1865, to Lane's testimony (Lane testified July 10, 1865, p. 766), Pierce *does not swear that he did not tell Lane what Lane states*, but only swears that he did not tell him that Goulding would have thought of what is alleged to have been suggested, if Winslow had not suggested it.

Pierce's second deposition, int. and ans. 8, p. 1117.

Pierce nowhere swears that in his conversation with Lane he did not limit Winslow's claim as Lane testifies he limited it.

This then was all that Pierce, in 1841 or 1842, claimed that Winslow did, and yet he swears, or would have it inferred, that Goulding admitted that Winslow introduced the spool and drum; whereas, in point

of fact, he admits to Lane that Goulding did all that; but when the spool and drum were put on the jack he seemed to be in doubt how to unwind the roving. How to wind it and get it on the spool by the drum, Goulding had accomplished; but how to unwind it, troubled him.

This claim that Pierce made to Lane as to what Winslow did has no tendency to show that Winslow did in fact anything of the kind; it was mere hearsay, especially as Pierce nowhere swears that he himself knew Winslow did anything of the kind. All that Pierce testifies to is, as we have seen, an alleged conversation between Goulding and Winslow.

And we have already seen that Goulding himself tried the experiment on the jack, that he did it without any suggestion whatever from Winslow, and Goulding's narrative of what he, Goulding, did, is not only natural and probable, but sworn to by Mr. Goulding positively, and without qualification.

Besides, Winslow was a mere blacksmith. He had no knowledge of woolen machinery. He was an under workman on small wages, and Goulding had had in view what he finally accomplished, years before he ever employed Winslow.

Another witness produced by defendant is Edward A. Winslow, the son of Edward Winslow. He is forty-five years old, and consequently in 1825 was only five years old. He therefore knew nothing of the invention.

E. A. Winslow's first deposition, int. and ans. 1, p. 66.

His principal testimony is as to alleged conversations which he says took place in 1834, and afterwards in 1840 or 1848, and which are emphatically denied by Mr. Goulding.

He says the first conversation between Goulding and his father was in 1834. He says Goulding wanted to have his father take hold with him to get the patent extended.

E. A. Winslow's deposition, int. and ans. 8, pp. 67, 68.

The patent did not expire till 1840, and it is incredible that Goulding, six years before it expired, viz., in 1834, was taking any action in respect to an extension. Edward A. Winslow was only fourteen years old at this time, and yet he undertakes to testify, thirty years afterwards, to an alleged conversation occurring at that early age about a subject concerning which he knew nothing, and which could not have made any impression on his mind. He says he was eighteen years old, but in fact he was only fourteen.

E. A. Winslow's deposition, ints. and ans. 80 to 87, pp. 78, 79.

As to the other conversation which he testifies to, he can't tell within ten years when it occurred. He says it was either 1840 or 1848.

E. A. Winslow's deposition, int. and ans. 9, p. 68.

But Goulding never had any difficulty in getting Winslow to sign a petition for the extension of the patent. He did sign it.

John Goulding's deposition, ints. and ans. 114, 115 to 119, inclusive, p. 482; Exhibit 27, p. 647; cross-int. and ans. 1056, p. 627.

Mr. Goulding denies having any such conversations as are alleged by Edward A. Winslow.

Goulding's deposition, ints. and ans. 111 to 120, inclusive, pp. 481, 482; ints. and ans. 132, 134, 135, pp. 484, 485.

E. A. Winslow does not say that Goulding did not deny the claim which his father made. All he says is, that he *don't recollect* that Goulding denied it or made any objection to it.

E. A. Winslow's deposition, int. and ans. 11, p. 69.

Exhibit 27, p. 647, signed by Edward Winslow, is entirely inconsistent with such alleged conversation.

E. A. Winslow's memory as to the alleged conversation is wholly unreliable.

E. A. Winslow's deposition, ints. and ans. 90 to 95, inclusive; int. and ans. 97, 100, pp. 79, 80.

Edward A. Winslow's whole statements of the alleged conversation are loose and vague.

Cross-ints. and ans. 90 to 97, inclusive, pp. 79 and 80.

The next alleged conversations that this witness testifies to was, he says, on the way from Dracut to Lowell, and in Richardson's eating saloon in Lowell, and in these he says Goulding admitted that his father introduced the surface drum.

E. A. Winslow, int. and ans. 17, pp. 69 and 70.

This alleged conversation is not admissible, as it was after Goulding had sold to the plaintiff the patent. His interest in the patent ceased July 9, 1863.

Exhibit 9, pp. 40, 41.

John Goulding's deposition, int. and ans. 169, p. 491; cross, 1034, p. 624.

It was after that date, as it was after the trial of Goulding *vs.* Lombard.

E. A. Winslow's deposition, int. and ans. 13, p. 69.

That trial was in January 1864, p. 864.

No conversation of Goulding after he parted with his interest is admissible, but if the court should hold otherwise, we say it is absolutely incredible that Goulding, eight or ten days after trial of that case resulting in sustaining the patent, should have had such conversation.

The witness does not undertake to give the whole of the conversation.

E. A. Winslow's deposition, cross-ints. and ans. 79, 80, 81, p. 78; cross-int. and ans. 97, p. 80.

Goulding denies that any such conversation occurred.

John Goulding's deposition, int. and ans. 136, p. 485; cross-ints. and ans. 695 to 721, p. 569 to 573; int. and ans. 348, p. 640; cross-ints and ans. 727, 728, 729, 730, 731, 732, 733 to 741, inclusive, pp. 573, 574, 575; cross-ints. and ans. 827, 830 to 834, p. 588, 589, 590.

Raeburn G. Clifford, another witness for defendant, says that they were disputing at the time, and the conversation was very excited.

R. G. Clifford's deposition, cross-ints. and ans. 27 to 31, p. 953, cross-ints. and ans. 65 to 67, p. 956.

J. M. Fowler says they were arguing the point.

J. M. Fowler's deposition, cross-ints. and ans. 15, 16, 20, 34, p. 1137, 1138, 1139.

Now, if Edward A. Winslow's testimony be true that Goulding admitted all they claimed, it is difficult to understand what they were disputing about. It is clear Goulding was not admitting what they claimed.

Another pretence which Edward A. Winslow has made is, that Goulding gave his father notes amounting to $20,000, which he says were dated in 1837, and payable upon Goulding's getting an extension of his patent.

Edward A. Winslow's deposition, int. and ans. 8, p. 1123; cross-ints. and ans. 14 to 41, inclusive, cross-int. and ans. 43, pp. 1124 to 1127, inclusive.

When this witness, Winslow, was examined the first time, which was March 10, 1865, p. 67, he says not a word about any such notes, but when he gives a second deposition, viz., Sept. 6, 1865, he refers to them for the first time. If such notes existed, why was he not interrogated before about them? It is a sheer fabrication.

Mr. Goulding distinctly denies that he ever gave him any such notes or any obligation of any kind, except a note and draft which he put into S. Lawrence's hands, as hereinafter stated.

John Goulding's deposition, cross-ints. and ans. 1077, 1078, pp. 642, 643.

Mr. Goulding, in August 1836, after the reissue of his patent of July 29, 1836, commenced three suits for infringement, one against Effingham L. Capron, one against Sylvanus Holbrook, and one against Wm. B. Fox & Co.

In 1837, the parties who were sued, with a large number of other manufacturers, requested a delay until they could investigate; they called a meeting, appointed a committee; that committee, after sending to England and spending months, reported that Mr. Goulding's claims were just and right, and ought to be paid. Samuel Lawrence, who was the principal man in the Middlesex Mills, which Mills employed Winslow, compelled Mr. Goulding to do exactly what he, Lawrence, demanded. Goulding was poor, and was ready to do anything and make any sacrifices to save the expense of litigation. He was too poor to litigate, too poor to cope with these wealthy infringers, and in the firm belief that the settlement with the manufacturers would be final, and they would pay his claims as they agreed to do, he, by Lawrence's demand, gave a draft on Lawrence in favor of Winslow for $2,100, and a note for $500, payable when his patent was extended. Lawrence agreed to proceed and collect of the manufacturers the royalty, and he did proceed and collect.

John Goulding's deposition, cross-ints. and ans. 859, 860, pp. 593 to 596; cross-ints. and ans. 869, 870, 872, 873, pp. 598, 599.

Exhibits 28 and 29, pp. 648, 649.

Exhibit A, p. 1535.

Exhibit B, p. 1536.

John Goulding's deposition, ints. and ans. 229, 230, p. 638; ints. and ans. 331 to 340, inclusive, pp. 638, 639; int. and ans. 343, p. 639; ints. and ans. 344 to 348, inclusive, pp. 639, 640.

Exhibit 28, p. 648.

Same Exhibit, p. 1535.

Lawrence collected the royalty of all the persons who had been sued, and they paid either by themselves or through their selling agents; and a large number of others paid the royalty.

Exhibit 28, p. 648.

John Goulding's deposition, ints. and ans. 346, p. 640, same Exhibit, p. 1535.

And the suits were accordingly entered N. P.

Exhibits Q, R, S, p. 277.

All the persons who were on the Committee, either themselves or through their selling agents, paid the royalty.

The report of that Committee was, that Goulding's claims were just and right, and ought to be paid; and there was nothing in the Report that Winslow had anything to do with the invention.

Isaac Thayer's deposition, ints. and ans. 12, 13, 14, 15, 16, 17, 18, 19, pp. 760, 761; also 1 to 12, pp. 758, 759, 760.

This note of $500 was payable on the extension of the patent. *Why should the* $500 *note have been preserved and notes to the amount of* $20,000 *destroyed?* Why should different notes amounting to $20,000. and dated the same time, and payable on the same contingency, be given? The whole thing is a fabrication; and it should be again remembered that this story about $20,000 notes being given was not mentioned or alluded to until months after Edward A. Winslow had given his first deposition. It is a fabrication, concocted long after the first deposition was given.

The whole Winslow family are trying to defeat this patent. They expect to derive some pecuniary benefit in defeating it.

E. A. Winslow's deposition, cross-ints. and ans. 60, 55, 56, 57, 58, 59, 61, 62, 63, 64, 65, 66, 67, pp. 76, 77.

Joseph M. Fowler (who married a daughter of Edward Winslow), deposition, ints. and ans. 1, 2, 3, p. 1135; cross-ints. and ans. 26, p. 1138; cross-int. and ans. 32, p. 1139; cross-int. and ans. 43, pp. 1140, 1141; ints. and ans. 15, 16, p. 1142.

This Edward A. Winslow is not a credible witness.

He is ready to sell his testimony to any person who will buy it.

E. A. Winslow's deposition, cross-ints. and ans. 101 to 116, pp. 80, 81, 82; cross-int. and ans. 73, p. 77; Exhibit 11, p. 85; cross-int. and ans. 1, p. 71; also ints. and ans. 26 to 39, pp. 82, 83, 84; cross-ints. and ans. 118 to 125 inclusive, pp. 84, 85.

Now his whole story about any propositions from Mr. Thayer to buy him out is false. Mr. Thayer denies the whole thing, and shows that he went to Lowell as Edward A. Winslow pretended to have some papers. He went there to see them but Winslow never showed him any, and during the interviews, Winslow himself proposed to Thayer that Jordan, Marsh & Co. should buy him out, which Thayer positively declined to do.

Fred'k W. Thayer's deposition, ints. and ans. 1 to 18 inclusive, pp. 773 to 776; ints. and ans. 28, 29, p. 777; ints. and ans. 30, 31, p. 778.

It is very certain from Edward A. Winslow's own conduct, that if there had been any disposition on the part of plaintiff to buy him up, he could have been bought.

Edward A. Winslow is now employed by the Merrimac Woollen Mills, who are infringers.

E. A. Winslow's deposition, int. and ans. 1, p. 67; cross-ints. and ans. 76 and 77, p. 78.

E. A. Winslow's statement of conversations between Goulding and his father is entirely inconsistent with what Pierce in his conversation with Lane claimed for Winslow. E. A. Winslow claims that his father alleged what he did, to be on the finisher. Pierce told Lane it was on the jack.

E. A. Winslow's deposition, int. and ans. 11, pp. 68 and 69.

We therefore submit that Edward A. Winslow is utterly unworthy of credit, and that no man's rights should be affected by the testimony of any such witness.

Another witness produced in relation to the alleged conversation with Goulding in Richardson's eating saloon is Joseph M. Fowler, a son-in-law of Edward Winslow.

As stated before, this alleged conversation was a long time after

Goulding had parted with his interest in the patent, and is therefore inadmissible.

But if admissible, we say —

The Winslow family evidently got Mr. Goulding in that saloon, and there assembled together, to see if they could not entrap Goulding in conversation.

J. M. Fowler's deposition, cross-ints. and ans. 4 and 5, p. 1136.

This witness believes, and swears under the belief, that if the Winslow family can defeat Goulding's patent, the Winslow heirs can obtain a patent — and has threatened to do all he could to invalidate the patent.

J. M. Fowler's deposition, cross-ints. and ans. 25, 26, 29, 30, 31, pp. 1138, 1139; cross-int. and ans. 32, p. 1139; cross-int. and ans. 43, pp. 1140, 1141; ints. and ans. 15, 16, p. 1142.

This witness is the same one John D. Cooper went to Lowell to see.

J. M. Fowler, deposition, cross-ints. and ans. 38 to 41, p. 1140.

The witness married Edward Winslow's daughter.

J. M. Fowler's deposition, ints. and ans. 1, 2, 3, p. 1135.

This witness admits that Goulding and the Winslows were disputing at the time in that saloon.

J. M. Fowler's deposition, cross-ints. and ans. 15, 16, p. 1137; cross-int. and ans. 20, p. 1138; cross-int. and ans. 34, p. 1139.

The alleged conversation is stated by the witness in answer to ints. 6, 7, p. 1135.

It is clear from his statement that Mr. Goulding was denying what the Winslows claimed.

This witness, in answer to int. 7, says he "can't attempt to state all the conversation in regard to it," and does not recollect ten minutes afterwards that he had so stated.

Cross-ints. and ans. 11, 12, 13, p. 1137.

He don't remember the conversation on the part of the Winslows.

Cross-ints. and ans. 24, 25, p, 1138.

Now it is absolutely impossible that Mr. Goulding, a short time after the trial of Goulding *vs.* Lombard, which resulted in sustaining the patent, should have made any such admission as is alleged.

Goulding testifies that he let them talk, that he never said what they allege, but let them talk, as he did not suppose the case was to be tried in an eating saloon, and he thought it was useless to discuss the subject there.

John Goulding's deposition, int. and ans. 136, p. 485; cross-ints. and ans. 695 to 721, p. 569 to 573; cross-ints. and ans. 727, 728, p. 573; cross-ints. and ans. 731, 732, p. 573, 574; cross-ints. and ans. 733 to 741, inclusive, p. 574, 575; cross-ints. and ans. 827, 830, 831, 832, 833, 834, p. 589, 590; int. and ans. 348, p. 640.

The business which Goulding had had with E. A. Winslow was taking up and paying the $500 note.

Another witness produced by defendant as to this alleged conversation, is R. G. Clifford, before alluded to, a cook, bar-tender, and waiter at Richardson's saloon.

R. G. Clifford's deposition, cross-int. and ans. 3, p. 951.

He never saw Goulding except at that time.

Cross-int. and ans. 9, p. 951.

He was not introduced to him, and had no conversation with him.

Cross-ints and ans. 10, 11, p. 951; cross-ints. and ans. 72, 73, p. 956.

This man is an old acquaintance and friend of George Winslow and Fowler. They were at that saloon often.

Cross-ints. and ans. 12 to 19, p. 951, 952.

This witness testifies that Goulding and Winslow were very excited and were disputing.

Cross-ints and ans. 27 to 31, inclusive, p. 953; cross-ints. and ans. 65, 66, p. 956.

It is incredible that this witness, who knew nothing respecting the subject they were talking about; had no interest in it; who was waiting in this eating saloon upon persons at the time, — should have recollected just so much and no more. He undertakes to swear, after the lapse of over a year, to the very words which he says Goulding used, and can't state anything that either of the others said.

Clifford's deposition, cross-ints. and ans. 9 to 92, inclusive, pp. 951 to 958.

Now, if Mr. Goulding was admitting all the Winslows claimed, why are they disputing, — why are they excited and angry, so much so as to arrest the attention of this witness Clifford, and make him inquire of Richardson what the trouble was?

Why is not Richardson produced? Mr. Goulding, as we have before seen, denies ever having had this alleged conversation at Richardson's eating saloon.

All the Winslow family who have testified, testify under the belief that they are to be pecuniarily benefited if the patent should be invalidated. They are in the market with their testimony for sale. They testify to no facts, but to alleged conversations, the most unreliable kind of evidence, and coming from the most unreliable witnesses.

The proceedings by the manufacturers in 1837, if admissible evidence, show clearly that after all the investigation they could make, they could find nothing to invalidate Mr. Goulding's patent. They never would have paid Goulding a farthing if Winslow had in fact done anything which could have defeated the patent. They had the best of counsel,

and if there had been anything whatever in the pretence now set up, they would have tried to defeat the patent. On the contrary, however, the Committee reported Mr. Goulding's claims were just and right, and ought to be paid.

Isaac Thayer's deposition, ints. and ans. 1 to 19 inclusive, pp. 758 to 761 inclusive; ints. and ans. 27 to 29 inclusive, p. 765.
John Goulding's deposition, cross-ints. and ans. 859, 860, 869, 870; pp. 593 to 596, 598; cross-ints. and ans. 872, 873, pp. 598, 599; exhibits 28, p. 648; 29, p. 649; A, p. 1535.

There was nothing in that report that Winslow had anything to do with the invention, or should be paid anything.

Isaac Thayer's deposition, ints. and ans. 12, 13, 15, p. 760; 29, p. 765.

Governor Davis and Charles Allen were the counsel for the manufacturers.

Isaac Thayer's deposition, int. and ans. 7, p. 759.
Goulding's deposition, int. and ans. 344, p. 639.

They requested a stay of proceedings for six months.

Isaac Thayer's deposition, ints. and ans. 7 and 10, p. 759.

Mr. Goulding never agreed to submit his rights to the determination of that Committee. They asked delay for their own benefit, and appointed a Committee for their own benefit.

John Goulding's deposition, int. and ans. 331, p. 638.

There was, so far as Goulding or Thayer knew, no hearing before the Committee. Neither of them had any opportunity to meet anything that might have been said to or urged before the Committee.

Isaac Thayer's deposition, ints. and ans. 27, 28, p. 765.
John Goulding's deposition, ints. and ans. 229, 230, 333, p. 638.

The requirement that Goulding should give Winslow anything was a requirement made by Samuel Lawrence only, and was not the act of the Committee; and the note and draft were in Lawrence's handwriting.

John Goulding's deposition, cross-int. and ans. 873, p. 598; ints. and ans. 333, 334, 336, pp. 638, 639; also last clause in answer to 859 cross-int., p. 596.
Exhibit 29, p. 649.
Samuel Lawrence's deposition, cross-int. and ans. 28, p. 1532.
Exhibit B, p. 1536.

The production of the note will show by comparison with the draft, that the body of the note was written by Lawrence. The body of the draft Lawrence admits was written by him.

Mr. Isaac Thayer, who was Goulding's agent, and was in contact with the Committee and heard their report, never knew that Goulding gave such note or draft until after they were given, and says the Committee did not report that anything should be paid to Winslow.

Isaac Thayer's deposition, ints. and ans. 16, p. 760; 12, 13, 15, p. 760.

Mr. Goulding was induced to give the note and draft, supposing that there would be no further controversy, and that his rights to royalty had been fully established, and that it would thenceforth be paid faithfully.

John Goulding's deposition, p. 595.

Goulding's pecuniary embarrassments were such that he had to do just as Lawrence required.

John Goulding's deposition, p. 595; cross int. and ans. 873, p. 598; int. and ans. 343, p. 639.
Isaac Thayer's deposition, ints. and ans. 17, 18, 19; pp. 760 761.

Goulding went into insolvency May 1, 1839.

Exhibit 35, pp. 661, 662, 663, and to p. 672 inclusive.

He obtained his discharge, p. 667; his total assets were only $798.25, p. 668; and his debts many thousands, p. 665.

John S. Hubbard's deposition, ints. and ans. 1 to 7, pp. 449, 450; 12, 13, 14, 15, 16, p. 451; 8, p. 450; and the whole of pp. 449 to 451 inclusive.

He never supposed by acceding to Lawrence's demand in giving the note and draft, that he even in the most remote way admitted any claim of Winslow.

John Goulding's deposition, cross-int. and ans. 873, pp. 598, 599; ints. and ans. 338, 339, 340, p. 639.

Even the Company of which Lawrence was Superintendent and Treasurer, the Middlesex Mills, and where Edward Winslow then was employed, paid.

John Goulding's deposition, ans. to int. 859, pp. 595 and 596; ints. 345, 346, 347, 348, pp. 639 and 640; exhibit 28, p. 648.

Samuel Lawrence's deposition, int. and ans. 1 to 3, inclusive, pp. 1526, 1527.

This account of Lawrence's shows that he did collect the royalty of twenty-three different parties.

Exhibit 28, p. 648.

The $500 note, which is in Lawrence's handwriting, shows that Lawrence believed the patent valid, and thought Goulding equitably and legally entitled to an extension of it.

Lawrence never would have written this note, payable when Goulding obtained an extension of his patent, if Lawrence supposed Winslow was the inventor, or had any meritorious connection with the invention.

If Thayer's and Goulding's statement as to the report of the committee is not correct, why were not George T. Rice and Francis Skinner, who were both living when the testimony was taken, produced?

John Goulding's deposition, cross-ints. and ans. 872, p. 598; 860, p. 596.

Why is not some manufacturer of the seventy or more who were at the meetings of the manufacturers produced?

Winslow never claimed, to Goulding, that he was entitled to or had made any part of the invention.

John Goulding's deposition, int. and ans. 340, p. 639.

Mr. Samuel Lawrence's deposition was taken in the case *vs.* Lombard, p. 1526. His memory is very uncertain, and he does not pretend to swear to anything positively. He don't even recollect who the committee were — int. and ans. 8, p. 1527.

He thinks there were only three on the committee (int. and ans. 8, p. 1527), and he can't state who was chairman, or name a single one of the committee, positively, except himself — cross-int. and ans. 7 and 8, pp. 1530 and 1531.

There were, in fact, seven on the committee.

Isaac Thayer's deposition, ints. and ans. 8, 9, p. 759.

All that Mr. Lawrence says about Winslow's having anything to do with the invention is, that the committee believed that Mr. Winslow's invention made the machine a practical one, and reported accordingly.

S. Lawrence's deposition, int. and ans. 7, p. 1527.

He says the committee reported that it was proper to pay Mr. Goulding and Winslow for the invention.

S. Lawrence's deposition, int. and ans. 6, p. 1527.

He can't swear positively what the report of the committee was. He talks about the spirit of the report, but his memory is wholly at fault as to what it was.

Cross-ints. and ans. 15, 16, 17, p. 1531; cross-ints. and ans. 24, 25, 26, 27, p. 1532.

He states only his impression of it after the lapse of nearly thirty years, and is very uncertain in his own mind about it.

S. Lawrence's deposition, cross-int. and ans. 23, p. 1532.

He told Thayer, in 1837, that the manufacturers would combine and break Goulding down, — that Goulding could not raise money enough to contend against them.

Isaac Thayer's deposition, int. and ans. 5, p. 759.

Winslow at this time was in the employment of the Middlesex Mills, of which Lawrence was manager.

S. Lawrence's deposition, cross-ints and ans. 1 to 4, p. 1530; int. and ans. 3, p. 1527.

Winslow continued in their employment until 1849.

E. A. Winslow's deposition, cross-int. and ans. 20, 21, p. 73.

That company were infringers.

E. A. Winslow's deposition, cross-ints. and ans. 68, 69, p. 77.

Lawrence's memory of the whole thing is very vague and uncertain.

Pages 1526 to 1534, inclusive.

His attention was not called to the subject from 1837 to 1862.

S. Lawrence's deposition, cross-int. and ans. 22, p. 1532.

This same Mr. Lawrence was compelled to leave Massachusetts, and has never returned to its soil since.

Cross-ints. and ans. 43 to 48, pp. 1533, 1534.

But the conduct of Mr. Lawrence shows that the report was not as he states.

Isaac Thayer's testimony shows that it was not.

Why, if Winslow was either sole or joint inventor, did this committee pay? They had the ablest counsel, and yet they report in Goulding's favor, and Lawrence proceeds to collect the royalty for him — which never would have been done had there been any defence to the patent.

Lawrence's whole conduct in the matter is to be condemned. He was to go on and collect; he proceeded far enough to collect sufficient

to pay the expenses of the committee and Winslow, and a small sum to Goulding, and then ceased to collect.

Cross-int. and ans. 38, p. 1533.

He had induced Goulding to believe that he would go on and collect. Goulding had given him licenses in blank upon the strength of this assurance. Goulding had accepted the small royalty. Lawrence then after collecting some amounts, and after the Committee got off by paying the small royalty and thus protected themselves, ceases to collect. Lawrence even compelled Goulding to pay the expenses of this very Committee.

John Goulding's deposition, p. 595.

In every way that he could, he takes the most unjust advantages of Mr. Goulding's necessitous condition.

Winslow was a mere tool used by Lawrence for his own purposes.

Whatever the committee reported was not binding on Goulding. It was without any hearing, — without any opportunity afforded to Goulding to substantiate his claims. It was a purely one-sided investigation, prosecuted in the interest of the manufacturers only, and for their sole benefit. Goulding never submitted his claims to them. He suspended further proceedings in his suits at their request, to give them an opportunity to investigate, and in the full belief that his claims were acknowledged and he should have no further difficulty, and being too poor to cope with the combined moneyed interest of the manufacturers, he accepted the royalty they agreed to pay.

Mr. James C. Dunn is also produced as a witness by the appellants. He is called to a conversation between himself and Winslow.

It is clear that this testimony is not admissible. Goulding was not present. It was a conversation between Dunn and Winslow only — Dunn says in 1829 or 1830.

It shows, even if admissible, (and it clearly is not,) that Winslow then made some claim on the jack — and the most it shows is a mere claim on his part.

It shows another significant fact, viz: that the first thing Winslow wanted to know when Dunn called on him, was how much Dunn would pay him for testifying. He wanted to be paid for testifying. He was in the market ready for a bid. Dunn told him that if he was an *honest man* he would tell the truth. This testimony of Dunn shows conclusively the character of Winslow — and that Winslow, for the purpose of getting a bid out of Dunn, pretended that Goulding had made him promises. Goulding distinctly denies ever having made any such promises. Had he made any, it is quite clear from Dunn's testimony, showing Winslow's character, that Winslow would have been quick to accept.

John Goulding's deposition, int. and ans. 144, pp. 486, 487; cross-ints. and ans. 987 to 994 inclusive, pp. 616, 617; cross-int. and ans. 1011, p. 620.

Goulding, at the time the Bellows suit was ended, did not know that Dunn or Bellows' counsel had seen Winslow.

John Goulding's deposition, int. and ans. 223, p. 637.

Mr. Goulding had brought two suits — one against Benj. Bussey, and one against Ephraim H. Bellows. — Exhibits F and L, pp. 272, 273.

John Goulding's deposition, int. and ans. 145, p. 487.

He had prepared fully for the trial of the Bussey suit inasmuch as it stood first for trial. He expected to try it and had made all the requisite preparations, when George H. Kuhn, who was interested with Bussy, proposed to settle the case.. Goulding objected on the ground that if he settled it, the defendant in the Bellows suit would not be ready and he, Goulding, was anxious to try the suit. Mr. Kuhn assured him that Dunn would be ready, and thereupon Mr. Goulding settled with Kuhn the Bussey suit, Kuhn paying him $700.

John Goulding's deposition, int. and ans. 145, pp. 487, 488.

George H. Kuhn, (defendants' witness), cross-ints. and ans. 11 and 12, p. 134; direct ints. and ans. 1 to 5, pp. 132, 133.

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John Goulding's deposition, int. and ans. 145, pp. 487, 488.

George H. Kuhn, (defendants' witness), cross-ints. and ans. 11 and 12, p. 134; direct ints. and ans. 1 to 5, pp. 132, 133.

The docket and Dunn's affidavit show that when the Bussey case was settled, and Goulding was pressing for a trial against Bellows, Dunn made an affidavit that it was agreed the Bussey case should be tried first, and that it had been settled and that Bellows was hence unprepared to go to trial, and the case was continued on Bellows' application and this affidavit.

Exhibit 34, pp. 660, 661.
Exhibit 33, p. 659.

Before the next term, Goulding's pecuniary circumstances had changed.

John Goulding's deposition, ans. to int. 145, p. 488; ans. to int. 146, 147, 148, pp. 488, 489.

He was so poor that even the costs were never taxed against him in the Bellows suit. — Exhibit L, p. 273.

Now Kuhn and Bussey, who both knew Winslow, (Bussey living within 4 1-2 or 5 miles of Dedham, and being the owner of the mill which Goulding hired and where he completed his invention), would not have settled with Goulding if there had been the slightest ground for the claim of Winslow. Mr. Kuhn and Mr. Bussey probably knew as much about the history of the invention as any person.

George H. Kuhn's deposition, ints. and ans. 1 to 5, inclusive, pp. 132, 133; cross-ints. and ans. 1 to 6, inclusive, p. 133; cross-ints. and ans. 9 and 10, inclusive, p. 134.

Every one of the witnesses in this case, in relation to Winslow's connection with the invention, were known, and what their testimony would be was known to the counsel in the suit of Goulding *v.* Lombard before it was tried, except, perhaps, John D. Cooper, whose testimony we shall hereafter consider.

Edward A. Winslow's deposition, cross-ints. and ans. 41, 42, 43, 48 and 49, p. 75; cross-int. and ans. 50, 51, p. 75.

George L. Pierce's deposition, cross-ints. and ans. 11 and 12, pp. 88 and 89.

James C. Dunn's deposition, ints. and ans. 8, 9, 10, 11, 12, 13, p. 137.

The whole subject of Goulding's patent and of Winslow's alleged invention, was fully investigated by the counsel for the defence in the suit against Lombard, and the defence abandoned by them. The counsel for the defence in that suit were J. G. Abbott, George Gifford, Esqs., Mr. Blatchford and J. B. Robb, Esq.

Statement of B. R. Curtis, pp. 864 to 866.
Agreement as to Yerrinton's testimony, pp. 861, 864.
Record in Goulding *v.* Lombard, pp. 866 to 876.

And the same defence, that Winslow was the inventor, and the same British patents, and the same allegation as to sales before the application for a patent and dedication to the public, were set up in that case as in this, with many other defences (pp. 871, 872, 873, 874, 875).

All these defences were fully investigated by the defendant's counsel in that case, and abandoned.

Lombard, the defendant in that case, took a license which in its terms recognizes the validity of the patent, and in which he recites that he was satisfied of its validity.

George D. Clark's deposition, int. and ans. 21, p. 785; also Exhibit 32, p. 796.

A large number of builders of machinery and the manufacturers of woolen goods have recognized the validity of the patent and paid the royalty.

791 sets of cards and 1,390 jacks have been licensed and the royalty paid on them.

George D. Clark's deposition, int. and ans. 31, p. 795; cross-int. and ans. 1, p. 796; Exhibit D^1, pp. 800 to 811 inclusive.

We will now proceed to consider the testimony of John D. Cooper, upon which the appellants undoubtedly place great reliance.

In places where this witness has lived long enough to acquire any character at all, he has achieved the notoriety of securing a very bad one.

Cooper says he went, after leaving Millville, to Holden, and remained there a year; then to Uxbridge, and remained there about a year; then to Plympton, and remained there two or three years; then to Templeton, and staid there five or six years; then to Barre, and staid there six years; and from Barre to Taunton, where he remained five or six years; then to Concord, N. H., and remained there some thirteen years; from thence to Colebrook in Oakham, in Massachusetts, where he staid two years; and thence to Haverhill, where he has been a little over twenty-two months.

John D. Cooper's first deposition, cross-int. and ans. 1, pp. 96 and 97.

Alvin Cook testifies to his bad character at Uxbridge.

Alvin Cook's deposition, pp. 812, 813.

Orsmus Taft testifies to his bad character at Uxbridge.

Taft's deposition, pp. 813 to 816 inclusive.

Emery Hastings, John W. Corbin, Lyman A. Rice, testify to his bad character at Barre.

Their depositions, pp. 817 to 820 inclusive.

Chace R. Pierce, Wm. Hutchinson, Daniel A. Trefethen, Charles B. Sawyer, testify to his bad character at Taunton.

Their depositions, pp. 821 to 828 inclusive.

The following witnesses testify to his bad character in Concord:

Wm. P. Ford, Calvin Howe, Amos Dodge, Wm. Wyman, Winthrop H. Ford, Sam'l M. Griffin, James L. Frost, Benjamin P. Stone, Caleb Parker, James H. Chase, Abraham J. Prescott, pp. 828 to 851 inclusive; Charles W. Harvey, pp. 876 to 878; Stephen D. Greeley, pp. 1198 to 1202; B. P. Stone's second deposition, p. 1203; Ira F. Morse, pp. 1205 to 1207;

George K. Mellen, p. 1208, 1209; Daniel F. Secomb, p. 1209, 1210; Wm. H. Rixford, p. 1210, 1211; Joseph W. Robinson, p. 1211, 1212; Nathan Farley, p. 1212 to 1214; George S. Young, p. 1215 to 1220, inclusive; Wm. Gordon, 1221, 1222; Elisha Adams, 1222 to 1226, inclusive; Charles H. Sanger, p. 1227 to 1230; Horatio N. Farley, p. 1230 to 1232; George W. Young, p. 1232 to 1234; Sylvester Dana, 1235; John B. Watson, 1236 to 1241, inclusive; Clark W. Batchelder, p. 1241; Wm. B. Hoit, p. 1245; Judge Asa Fowler, p. 1299 to 1309, inclusive.

Calvin Howe's second deposition, p. 1427 to 1429.

Abram J. Prescott's second deposition, p. 1456, 1457.

Abel Hutchins's deposition, p. 1457.

Wm. Hutchinson's second deposition, p. 1458.

Emery Hastings' second deposition, p. 1478 to 1481; third deposition, p. 1540, 1541.

John W. Corbin's second deposition, p. 1481; third deposition, p. 1482; fourth deposition, p. 1539.

Forty witnesses have thus sworn that Cooper's general reputation for truth and veracity is bad. Their testimony is affirmative, while all the testimony produced by appellants is of a negative character.

When we consider the facility with which bad men with some good qualities can rally friends and acquaintances in support of their character, it is not surprising that many should have appeared to assist Cooper. But his character is impeached by many of the witnesses who were called to sustain him.

John Kimball, cross-exam. pp. 1087 to 1090, inclusive.

D. A. Ward, cross-exam. pp. 1077 to 1083, inclusive.

H. B. Foster, cross-exam. p. 1074.

George W. Chapman, cross-exam. p. 1061; cross-int. and ans. 5, p. 1063.

Woodbridge Odlin, cross-exam. pp. 1376, 1377.

James Sedgley, pp. 1024 to 1028, inclusive.

Perkins Gale, int. and ans. 8, p. 1022.

James Morgan, pp. 1014, 1015.

John Brown, cross-exam. p. 1010.
Lyman D. Stevens, p. 1001.
Edson Hill, p. 997.
George A. Pillsbury, cross-exam. pp. 968, 969.
Francis A Cushman, cross-exam. pp. 970, 971.
Wm. L. Foster, p. 1012.
Walter Harriman, cross-ints. and ans. 2 to 6, p. 965.
Charles H. Norton, cross-exam. pp. 971, 972.
Robinson Frye, cross-int. and ans. 15, p. 974.
Lowell Eastman, p. 978.
John G. Lincoln, cross-exam. p. 979; cross-int. and ans. 5. p. 980.
Benj. F. Gale, p 983.
N. G. Ordway, pp. 990, 991.
G. W. Bosworth, p. 993.
S. C. Badger, cross-exam. p. 1009.
Thomas Stuart, p. 1029.
B. E. Badger, p. 1030.
Wm. Kent, cross-exam. pp. 1034, 1035.
A. J. Barker, p. 1046.
Zacheus Sherman, cross-ints. and ans. 11, p. 1050; cross-int. and ans. 22, p. 1051.
Arthur Fletcher, pp. 1067, 1068.
H. G. O. White, p. 1097.
D. J. Abbott, p. 1104.
Isaac Elwell, cross-exam. pp. 1108, 1109.
Wm. P. Hardy, cross-exam. p. 1112, 1113.
Wm. Wilson, cross-ints. and ans. 51, 52, p. 1351; cross-ints. and ans. 56, 57, 58, p. 1352.
Abraham G. Jones, cross-exam. pp. 1392 to 1394.
N. B. Bryant, pp. 1404 to 1406.
Cyrus W. Paige, pp. 1414 to 1418, inclusive.

In a place as large as Concord, N. H., there are undoubtedly men whose characters for truth and veracity are extremely bad, and yet at the same time many witnesses could be produced who never heard their

characters spoken of in respect to truth and veracity. The testimony here is simply negative — not showing by any means because some of the witnesses have not heard Cooper's character pronounced bad, that it is not bad, but only showing that they have not heard it stated to be so.

It is impossible, we submit, for any man's character for truth and veracity to be otherwise than bad when forty witnesses swear that it is bad, even if ten times that number should be produced to swear that they had never heard it questioned; especially here, where there is enough evidence from the witnesses called to sustain Cooper's character, to show that his character is bad.

John Kimball, called to sustain his character, admits that he said Cooper was treacherous to his friends and was a scamp, and that he has heard his character frequently discussed.

Cross-int. and ans. 1, 3, 4, p. 1087; cross-ints. and ans. 13, 14, 17, 18 to 23, p. 1088; cross-int. and ans. 25, p. 1089; cross-int. and ans. 26, pp. 1089, 1090; cross-ints. and ans. 27, 28, p. 1090; cross-ints. and ans. 29, 30 and to 35, p. 1090.

H. B. Foster (another witness called to sustain Cooper's character) has heard his character for truth discussed as often as once a year within five years. The character of men who stand well in the community in respect to truth is not discussed. The very fact of discussion shows his character not to be good.

H. B. Foster, cross-ints. and ans. 1 to 5 inclusive, p. 1074.

N. B. Bryant, cross-ints. and ans. 1 to 3, p. 1404; cross-ints. and ans. 10, 11, p. 1406.

George W. Chapman (another witness called to sustain him and who has been his counsel) has heard his moral character impugned, has stated that men in Concord had a bad idea of him in respect to his pecuniary dealings. He has said that Governor Gilmore and others of Concord were down on Cooper.

George W. Chapman's deposition, cross-ints. and ans. 3, 4, p. 1061; cross-int. and ans. 5, p. 1063.

David A. Ward (another witness called to sustain him) shows that he has no confidence either in the honesty or veracity of Cooper. — Cross-ints. and ans. 10 to 66, pp. 1077 to 1084.

He admits that he may have said that Cooper had been of loose morals and was beyond the time of life when a reputation was necessary or needed, and that he may have said that such men had not the power to withstand temptation that a straightforward man with good morality at bottom had, and that if Cooper began to swear to a thing, he would stick to it till all was blue, and that he, Ward, would not risk a case upon Cooper's testimony alone.

Cross-ints. and ans. 33, 34, 32, p. 1080; cross-ints. and ans. 42, 43, 41, p. 1081; cross-ints. and ans. 61, 62, 63, 64, p. 1083.

Woodbridge Odlin, another witness called to sustain Cooper, admits that he has heard a number of times that Cooper colluded with the railroad employees to get property of the railroad at less than its value.

Cross-int. and ans. 9, 10, 11, p. 1377.

James Sedgley, another witness called to sustain Cooper's character, shows that he studiously avoids stating what he has heard others say, and only gives his own opinion of Cooper.

Cross-ints. and ans. 32, 33, p. 1026; cross-ints. and ans. 11, 13, 14, 15, pp. 1024, 1025.

Perkins Gale, called to sustain him, says that he himself has stated that Cooper *prided himself on his word, and had no other religion.*

Perkins Gale's deposition, int. and ans. 8, p. 1022.

James Morgan, called to sustain him, admits that he heard that Cooper circulated reports respecting a person highly connected with the church which Morgan attends, that were false and scandalous and credited by no one.

James Morgan's deposition, cross-examination, p. 1015.

John Brown, called to sustain him, admits that he may have heard it stated that Cooper was dishonest.

John Brown's deposition, cross-examination, p. 1010.

A. J. Barker's deposition, cross-ints. and ans. 1 to 7, inclusive, p. 1046.

Zacheus Sherman's deposition, cross-int. and ans. 11, p. 1050; cross-int. and ans. 22, p. 1051.

Wm. Wilson's cross-ints. and ans. 51, 52, p. 1351; cross-ints. and ans. 56, 57, p. 1352.

The witnesses called to sustain him show his moral character to be bad.

James Morgan, cross-int. and ans. 7, p. 1015.

Wm. L. Foster, cross-ints. and ans. 4, 5, 6, 7, 8, 9; int. and ans. 7, pp. 1011, 1012.

Walter Harriman, cross-int. and ans. 6, p. 965.

Chas. H. Norton, cross-ints. and ans. 1, 2, 3, 4, 5, p. 971, 972.

Lyman D. Stevens, cross-ints. and ans. 4, 5, p. 1001.

Edson Hill, cross-ints. and ans. 6, 7, 8, 9, 10, p. 997.

Arthur Fletcher, cross-ints. and ans. 2 to 6, inclusive, p. 1067.

George A. Pillsbury, cross-ints. and ans. 3, 4, 5, 6, 7, 8, 9, pp. 968, 969.

F. A. Cushman, cross-ints. and ans. 3, 4, 5, 6, 7, pp. 970, 971.

Lowell Eastman, cross-ints. and ans. 3 to 9, inclusive, p. 978.

John G. Lincoln, cross-ints. and ans. 1 to 4, 5, pp. 979, 980.

B. F. Gale, cross-int. and ans. 16, p. 983.

N. G. Ordway, cross-int. and ans. 13, p. 991.

Geo. W. Bosworth, cross-ints. and ans. 10 to 14, p. 993.

S. C. Badger, cross-int. and ans. 3, pp. 1008, 1009.

Thomas Stuart, cross-ints. and ans. 2 to 6, p. 1029.

B. E. Badger, cross-examination, p. 1030.

Wm. Kent, cross-ints. and ans. 1 to 4, inclusive, pp. 1034, 1035.

H. G. O. White, cross-ints. and ans. 3 to 13, p. 1097.

D. J. Abbott, cross-ints. and ans. 1 to 8, p. 1104.

Isaac Elwell, cross-ints. and ans. 10 to 19, p. 1109.

Wm. P. Hardy, cross-ints. and ans. 1 to 4, p. 1112.

Abraham G. Jones, cross-int. and ans. 6, pp. 1392, 1393.

Cyrus W. Paige, cross-ints. and ans. 15, 16, 17, 18, 19, 20, p. 1416; ints. and ans. 9, 10, 11, p. 1417; cross-ints. and ans. 21 to 24, pp. 1417, 1418.

Cooper's own testimony shows that his evidence in other cases has been entirely at variance with his previous statements.

Cooper's third deposition, cross-ints. and ans. 138 to 144, pp. 1506, 1507.

Cooper testified that he had trouble with Emery Hastings about a mortgage.

Cooper's second deposition, int. and ans. 70, p. 1171.

Emery Hastings' deposition, ints. and ans. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, pp. 1478, 1479, 1480.

Cooper told Jno. W. Corbin that the mortgage to Adams was a sham.

Jno. W. Corbin's deposition, p. 1482.

Cooper told Corbin that he never did anything in his life which did him so much good as when he cheated Hastings out of his mortgage.

Jno. W. Corbin's fourth deposition, p. 1539.

Cooper denies that he told Corbin so.

Cooper's third deposition, cross-ints. and ans. 206 to 208, p. 1517; cross-ints. and ans. 15 to 22, p. 1493.

The mortgages produced show that Cooper, Feb. 9, 1842, after agreeing to give Hastings security, made a mortgage to James Adams 2d, his father-in-law, for $1200, which was recorded the same day.

Exhibit 46, p. 1545.

And afterwards on the same day made a mortgage to Hastings, as Hastings testified, on the same property, not disclosing in any way, either in the mortgage or otherwise, the existence of the mortgage to Adams.

Exhibit 47, p. 1546.

Cooper after this left Barre deeply in debt, went to Taunton; and all that Hastings ever got on the mortgage was about $40. He considered he had been cheated and that it was worthless.

Emery Hastings' third deposition, ints. and ans. 4 and 5, p. 1540; cross-ints. and ans. 4 and 5, int. and ans. 8, p. 1541.

Cooper produces the note secured by the mortgage which he gave Hastings.

Int. and ans. 58, p. 1511.

But he nowhere swears what he paid on it. He says it was given to him by James Adams or Daniel Bacon. He can't tell how much he paid on it; it was in 1847 or 1848. He paid whatever he paid on it to James Adams or Daniel Bacon.

Cross-ints. and ans. 149 to 154, p. 1512.

John W. Corbin swears, as we have seen before, that Cooper told him that he never did anything in his life which did him so much good as when he cheated Hastings out of the mortgage.

Jno. W. Corbin's fourth deposition, p. 1539.

Cooper left Mr. Goulding's employment suddenly, and there was some difficulty between them.

George L. Pierce's deposition, cross-int. and ans. 4, p. 88.

He testifies to certain things alleged by him to have been done by Winslow, and to certain conversations alleged to have occurred with Goulding.

John D. Cooper's first deposition, int. and ans. 5, pp. 92, 93, 94; int. and ans. 31, pp. 122, 123.

The story is highly improbable in itself that Mr. Goulding after he moved to Dedham should send Cooper to Whiting & Lowder's, to work on their machine, or that he should ask Cooper how he liked the

Abraham G. Jones, cross-int. and ans. 6, pp. 1392, 1393.

Cyrus W. Paige, cross-ints. and ans. 15, 16, 17, 18, 19, 20, p. 1416; ints. and ans. 9, 10, 11, p. 1417; cross-ints. and ans. 21 to 24, pp. 1417, 1418.

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John D. Cooper's first deposition, int. and ans. 5, pp. 92, 93, 94; int. and ans. 31, pp. 122, 123.

The story is highly improbable in itself that Mr. Goulding after he moved to Dedham should send Cooper to Whiting & Lowder's, to work on their machine, or that he should ask Cooper how he liked the

machine, when the appellants' own witnesses and John Goulding prove that Goulding had the Whiting & Lowder condenser (boot legs) at Halifax some time before he moved to Dedham, and gave it up as a failure at Halifax.

Deposition of Isaac C. Bosworth (defts.' witness), ints. and ans. 1 to 8, pp. 1152, 1153; cross-ints. and ans. 2, 10, pp. 1154, 1155.

Deposition of Daniel Bonney (defts.' witness), pp. 1151, 1152.

Deposition of John Goulding, cross-ints. and ans. 516, 518, 519, pp. 548, 549; ints. and ans. 79, 80, pp. 476, 477; ints. and ans. 104 to 108, pp. 480, 481.

It will be observed by this testimony of Cooper that Cooper himself if his statement be true, was as much of an inventor as Winslow. If his story be true, he made the suggestions, and Winslow followed them.

Cooper's deposition, int. and ans. 5, pp. 92, 93, and 94; int. and ans. 31, pp. 122, 123.

Cooper says the first time his attention was called to these conversations, after he left Goulding's, was in 1864.

Cooper's deposition, cross-int. and ans. 54, p. 102.

He undertakes, after the lapse of these forty years, to testify to conversations, and to the exact words of the conversations.

Cooper's deposition, cross-ints. and ans. 83 to 88, inclusive, p. 105; cross-ints. and ans. 114 to 120, inclusive, p. 108.

Mr. Goulding distinctly swears these things and conversations testified to by Cooper, never did take place.

John Goulding's deposition, ints. and ans. 81 to 94, inclusive, pp. 477, 478, 479; ints. and ans. 97 to 103, pp. 479, 480.

Cooper claims that Winslow did more than Winslow himself ever pretended to have done.

If Cooper's statements be true, Winslow applied the spool and drum to cards and jack, and also the creel and guide pins.

Cooper's deposition, int. and ans. 5, pp. 92, 93, 94; int. and ans. 31, pp. 122, 123.

And we have seen the extent of what was claimed by Winslow in Lane's deposition.

David Lane's deposition, pp. 766, 767, 768.

And that claim was, that Winslow suggested after Goulding got the whole thing, and the drum and spool on the jack, to take the roving off the spool in the same way that he got it on.

D. Lane's deposition, int. and ans. 9, p. 767.

Cooper's testimony now, is in direct conflict with his previous statements. He told Col. John S. Bryant, in Haverhill, in September, 1864, that he had seen a man a few days before that he had not seen for a great length of time — John Goulding — the man he worked for in a woolen mill when he, Cooper was a boy; the man who invented the machinery for making the endless roll, and got out a patent on it, the greatest patent ever obtained in the United States, worth millions of money. Col. Bryant then asked him what the endless roll was, and Cooper said it was the roll that wound up round the spool instead of the old short roll, and that he, Goulding, had made a good thing out of it, but had sold out, and that the men who kept it would make an immense fortune by it, as the factories all had to use it and could not do without it. Col. Bryant then asked him how long ago it was invented, and Cooper replied, Goulding did it while he was at work for him, and said that Goulding got it so that he thought it was perfect, but the roll broke too often and he, Cooper, suggested to him a little alteration, and Goulding fixed it in that way and it worked like a charm. That Cooper did not state what his suggestion was, except that it was trifling, and did

not mention any other person as having anything whatever to do with the invention.

John S. Bryant's deposition, ints. 1 to 7, inclusive, pp. 1310, 1311; cross-ints. 13, 14, 15 to 22, pp. 1312, 1313, 1314; int. 8, p. 1329; exhibit 42, p. 1332; int. 16, p. 1332.

Cooper is naturally a talkative man, and would be very likely to have just such a conversation.

Cooper's third deposition, cross-ints. and ans. 15 to 22, p. 1493.

Coopor is venal and corrupt, and admits himself to be so.

The evidence of a man of this character is utterly worthless.

He has struggled to induce the appellee to buy his testimony, and is as venal a character as can be found.

He admits that he said to Mr. Stevens that he was in the market, and that he said to Mr. Brooks that he was in the market, and that there was a price for every man.

John D. Cooper's deposition, cross-int. and ans. 179, p. 117; cross-ints. and ans. 203, 204, p. 121; cross-ints. and ans. 182, 183, 184, 191, 192, 193, 194, 195, 196, 197, 199, 200, 201, 202, 203, 204, pp. 117, 118, 119, 120, 121; cross-ints. and ans. 205, 206, 207, 208, p. 123.

Cooper goes to Lowell to see what he can make out of the Winslow family.

Cooper's deposition, cross-int. and ans. 129, p. 109; cross-ints. and ans. 55 to 62, p. 102; cross-ints. and ans. 66, 67, 68, p. 103; cross-ints. and ans. 73, 74, 75, 76, 78, and 124 to 130, pp. 103, 104, 109, 110.

He goes to see Edward Harris and others, to see what he can make out of the manufacturers.

Cooper's deposition, cross-ints. and ans. 130 to 163, pp. 110, 111, 112, 113.

He goes to Worcester, to see what he can make out of Mr. Goulding. Then he goes to Jordan, Marsh & Co., to see what he can make out of them.

Wm. H. Stevens, who was in the employment of Jordan, Marsh & Co., testifies that Cooper came to Jordan, Marsh & Co.'s store, in Sept. 1864. That Cooper then said that he was open to a proposition to leave the country to avoid giving his testimony, and that he was ready to start the next morning; also, that the appellants' case was not worth a farthing without his testimony, and that the appellee's case was not worth a fraction with his testimony against him — that he, Cooper, had no abiding place, and would as soon live in Canada as any where else. That he had been up to Worcester, to see Goulding, and had given him every opportunity to get rid of him. That at one time he would have been satisfied with a very small amount, but now he was poor, was getting old — too old to work, and should want money enough to live on. That he, Stevens, did not, in any manner, entertain any such proposition from Cooper.

Wm. H. Stevens' deposition, pp. 768 to 773 inclusive.

George D. Clark also testifies to the same.

Geo. D. Clark's deposition, ints. and ans. 1 to 20 inclusive, pp. 783 to 785; also, int. and ans. 22, cross-int. and ans. 34, p. 791; cross-ints. and ans. 47, 48, pp. 792, 793; int. and ans. 30, p. 795.

Frederick W. Thayer testifies that he went to Worcester, in Sept. 1864; that he was introduced to Cooper; that Cooper wanted to sell himself, and said that if he was out of the way, the Goulding patent would be gained, but if he gave his evidence it would be lost; and that Cooper also said that the best thing to be done was that he should be got out of the way; that Cooper wanted him to make him a proposition to leave immediately, and said if Thayer did not do so the other side would; that they had got him in a corner, so that he would have to give his deposition if they caught him.

Thayer told him he would like to know what his evidence was, and wanted him to see Mr. Ball, the counsel, who was then absent and did

not expect to return until the next Monday. That Cooper was very anxious that Thayer should make him a proposition, and said he could go to Canada and be out of the way. Thayer told him he was not buying up evidence, but would like to have him wait and see Mr. Ball.

Mr. Thayer testifies that he wanted Mr. Ball to see him to see what his evidence was, and that Mr. Ball was at the West at the time.

F. W. Thayer's deposition, ints. and ans. 24, 25, pp. 776, 777; int. and ans. 20, p. 776; ints. and ans. 18, 19, 22, 23, p. 776.

Now when the question is put for the first time on cross-examination to Cooper about his proposition made to Mr. Clark and Mr. Stevens to leave the country, etc., finding that the evidence of his venality was to be brought out in the case, Cooper, to shield himself, then for the first time pretends that Stevens spoke about an amount to him and that Goulding made a proposition to him. If any such proposition had been made to him by Goulding or Stevens, why did he not refer to it on direct examination? If such proposition had been made he would undoubtedly have referred to it, but he does not, and does not because it was never made; and it is only when he ascertains that we propose to show his venality that he turns round and swears that Stevens spoke about an amount, and that Goulding made a proposition to him.

He admits that he told Mr. Brooks that he was in the market and there was a price for every man. — Int. and ans. 204, p. 121.

He admits that he told Stevens the same thing, and his own testimony shows that he did make to Stevens and Clark a proposition to leave the country.

John D. Cooper's deposition, cross-ints. and ans. 176 to 204 inclusive, pp. 115 to 121 inclusive.

Stevens swears distinctly that the proposition was made solely by Cooper; that he, Stevens, never said anything to Cooper about an amount, or anything of the kind, and never entertained Cooper's proposition in any way.

Stevens' deposition, int. and ans. 14, pp. 769, 770.
Geo. D. Clark's deposition, int. and ans. 30, p. 795.

It is also certain that Cooper's whole statement about any offer by Goulding is a sheer fabrication.

When he called at Jordan, Marsh & Co.'s store, he stated in the presence of Stevens and Clark that he had given Goulding every opportunity to get rid of him, and that at one time he would have been satisfied with a small amount, but now he was poor, was getting old, too old to work, and he should want money enough to live on, and he did not pretend then that Goulding had made him any proposition.

Wm. H. Stevens' deposition, int. and ans. 12 and 13, p. 769.
George D. Clark's deposition, int. and ans. 10, 11, 12, 15, 16, 17, 18, pp. 784, 785, cross-int. and ans. 34, p. 791.

John Goulding testifies that instead of making any proposition to Cooper, Cooper proposed to him to leave the country, if he was paid money enough for so doing.

Jno. Goulding's deposition, ints. 93, 94, 97, 98, 99, 100, 101, 102, 103, pp. 478, 479, 480; cross-ints. and ans. 932, 933, 934, 936, pp. 607, 608; cross-ints. and ans. 962, 963, p. 611; cross-ints. and ans. 956, 957, pp. 610, 611; ints. and ans. 198, 199, pp. 632, 633; ints. and ans. 194 to 199 inclusive, pp. 632, 633.

Goulding had no interest in the patent in September, 1864, and it was quite immaterial to him how the suit resulted.

Exhibit 9, pp. 39, 40, 41; int. and ans. 103, p. 480.

It is perfectly certain that if any person had made Cooper a proposition, he would have accepted it quickly, and without hesitation. His own admission of his venality leaves no room for doubt, that as he was in the market, and up for a bid, he would gladly have accepted one.

His appearance in the case as witness for the appellants, taking his character and his own estimate of his character, is a complete refutation of all his stories about offers from Mr. Goulding or Mr. Stevens.

Cooper nowhere in his first deposition pretends that Stevens said anything to him about leaving the country: but months after giving that deposition (he gave it March 1865, — p. 92), finding that his venality had been fully exposed, when he comes to give a second deposition

(Sept. 1865, — p. 1160), he says Mr. Stevens told him that it was legally right to leave the country, and that he could make a big thing out of it, and that part of it belonged to him; and that he (Cooper) told him it might be legally right, but that it was morally wrong.

John D. Cooper's second deposition, ints. and ans. 39, 40, 41, 42, pp. 1166, 1167.

This is the first time that Cooper states anything of this sort, although the interviews with Clark and Stevens had been fully brought to his mind and inquired about when he gave his deposition in March 1865. Why did he not testify to this in his first deposition, if it ever occurred? It never did occur, and is absolutely false.

Mr. Stevens declares it to be false.

Wm. H. Stevens' second deposition, ints. and ans. 1 to 9, p. 1194, 1195; cross-ints. and ans. 15, 16, p. 1197; also whole of his deposition, pp. 1194 to 1197, inclusive.

So George D. Clark declares it.

Geo. D. Clark's second deposition, ints. and ans. 1 to 5, inclusive, p. 1192.

It is, we submit, proved by Cooper's own confession, and by the testimony of Frederick W. Thayer, William H. Stevens, George D. Clark, and John Goulding, that Cooper is venal and corrupt, and is ready to testify for the parties who will pay him the most for it.

Cooper has done no business for nearly a year, but has been employed all this time by appellants in this case.

Cooper's second deposition, cross-ints. and ans. 1 to 5, p. 1174; cross-ints. and ans. 94 to 100, inclusive, pp. 1183, 1184.

He has been in every direction in this case hunting up witnesses for the appellants.

Cooper's second deposition, cross-ints. and ans. 13 to 50, pp. 1175 to 1179, inclusive; cross-ints. and ans. 60 to 73, inclusive, pp. 1180, 1181.

Cooper produces a book containing an account with Pitts & Buffum. This book was produced by him before Pitts & Buffum's time book was found, but after Pitts & Buffum's day books had been produced. The ink with which that account in Cooper's book was written is unlike anything in the book, and the account was evidently fabricated recently. Cooper had access to the day books of Pitts & Buffum before he mad up this account on his book.

Deposition of Charles H. Tyler, pp. 1247 to 1258.
Deposition of Charles French, pp. 1258 to 1275.
Deposition of Geo. N. Comer, pp. 1333 to 1345.

This account purports to be in 1824 and 1825. Cooper followed teaming in Plympton in 1827, not before; and the entries of this teaming in 1827 are entered on this book before the entry of Pitts & Buffum's account.

John D. Cooper's second deposition, cross-ints. and ans. 118 to 121, p. 1186.

Why was not this book produced before, if it then contained the account with Pitts & Buffum? The appellants thought it material to fix the time when Cooper left Goulding. By Cooper's own statement this book was in Cooper's possession in a chest all the time.

John D. Cooper's second deposition, ints. and ans. 112, 113, pp. 1190, 1191; cross-int. and ans. 128, p. 1191.

This book is produced for the first time Sept. 25, 1865, when Cooper gives his second deposition. — Ints. and ans. 2 and 3, p. 1160.

These day books of Pitts & Buffum, from which Cooper probably copied some of the articles charged, so as to make the two books in certain particulars agree, were produced by Moses Buffum when he gave his first deposition, and Cooper had access to them.

Moses Buffum's second deposition, cross-ints. and ans. 204, 205, p. 1375.

Buffum's first deposition was given Aug. 15, 1865, p. 939, and he then had the day books, one of which was then put in evidence.

Moses Buffum's first deposition, ints. and ans. 23, p. 942.

Why does Cooper go to Lowell to see Pierce and the Winslow family?

George L. Pierce's deposition, cross-ints. and ans. 4 to 10, inclusive, p. 88.

Cooper's deposition, cross-ints. and ans. 55 to 64, p. 102; cross-ints. and ans. 124 to 129, p. 109.

And to Worcester to see Goulding? Why does he, after his return, call at Jordan, Marsh & Co.'s? And why does he search out the manufacturers?

It was clearly done to see if he could not sell his testimony. He utterly failed in his attempts to get the appellee to buy it, and we find him appearing as the main pillar upon which the appellants rest their hopes.

Even if Cooper's statement about Winslow were true, it does not show, or tend to show, that Goulding had not previously tried the experiment which Goulding swears he tried and found it to work; and there is nothing to show that Winslow did not receive all his ideas from Goulding.

The mill where the machinery was operated, and the experiments tried, was about one hundred rods distant from the machine shop where Winslow and Pierce were employed.

Rufus Melvin's deposition, int. and ans. 16, p. 741.

Cooper does not undertake to swear that Winslow made either a spool or drum.

Cooper's first deposition, cross-ints. and ans. 93 to 112, pp. 106, 107, 108; cross-ints. and ans. 166, 168, p. 114; cross-ints. and ans. 114, 115, 116, 117, 118, 119, 120, p. 108.

Why are not some of Goulding's workmen, besides Cooper, produced to show Winslow had something to do with the invention, if it were true?

Cooper says Goulding had ten or eleven persons employed in the mill, and fourteen or fifteen persons employed in the machine shop.

John D. Cooper's deposition, cross-int. and ans. 44, pp. 100, 101; cross-ints. and ans. 45 and 46, p. 101.

Mr. Goulding has afforded the appellants every opportunity to produce his workmen. He has named all he could recollect, and made it a point to get the names of all that he could ascertain, and give them to appellants.

John Goulding's deposition, p. 560.

We therefore submit that the testimony of Cooper is at variance with his previous declarations as to the invention; that he claims as Winslow's invention more than was ever pretended or claimed by Winslow for himself; that his testimony in itself is wholly unreliable; that his character for truth and veracity is bad; and that he is venal and corrupt upon his own testimony and upon the testimony of other witnesses; and that he is ready to swear to anything that may be necessary to carry out his own corrupt purposes; broken down in reputation and morals, bankrupt in finances, a mere tool drifting about ready to be used wherever he is paid.

The Lowder & Whiting machine has been referred to by Edward A. Winslow and Cooper, and the Court will pardon us for again referring to it for a moment, in this connection. It was a failure, as we have already seen.

Daniel Bonney says that Goulding had at Halifax a machine called the Lowder.

Daniel Bonney's deposition, pp. 1151, 1152.

Isaac C. Bosworth testifies to the same point, and thinks it was made at Goulding's at Halifax; and that Goulding got the card clothing elsewhere. He says it was made at Goulding's or altered there from some other machine.

Isaac C. Bosworth's deposition, ints. and ans. 1, 2, 3, 4, 5, 6, 7, 8, pp. 1152, 1153; cross-int. and ans. 2, p. 1154; cross-int. and ans. 10, pp. 1154, 1155.

It was hardly necessary to introduce these witnesses, as Goulding had previously testified that he had at Halifax what was called the Lowder boot legs.

Jno. W. Goulding's deposition, cross-ints. and ans. 516, 518, 519, pp. 548, 549; direct int. and ans. 200, p. 633; direct int. and ans. 210, p. 635.

It is proved by all the witnesses that this Whiting and Lowder machine or boot legs, or whatever it may be called, was a failure.

Bosworth (appellants' witness) so testifies.

Int. and ans. 7, p. 1153; cross-int. and ans. 2, p. 1153; cross-ints. and ans. 11, 12, 13, 14, p. 1155.

Truman Clark swears the Whiting & Lowder machine was a failure.

Ints. and ans. 30 to 37, inclusive, p. 882.

John D. Cooper says it was a failure. He says he went to work at Whiting & Lowder's, that he labored there a number of days, got through with his work and went back to Goulding's. That Mr. Goulding asked him how he got along, and how he liked the plan of making the roll in that way, that he, Cooper, told him the principle was good but it plagued him very much about the rolls stretching, and about their coming out of the box, and that sometimes they would come out double — that they would kink up, and in consequence of that — that is the stretching and kinking up — he would make some large threads and some small ones; and that he told Mr. Goulding they could never make even yarn in that way.

John D. Cooper's deposition, p. 93.

John Goulding's testimony also shows it to have been a failure.

Goulding's deposition, ints. and ans. 76, 77, 78, 79, 80, p. 476, 477; ints. and ans. 104, 105, 106, 107, 108, pp. 480, 481; cross-ints. and ans. 406, 407, 408, 409, 410, p. 535; cross-ints. and ans. 415, 416, 423, p. 536; cross-ints. and ans. 450 to 454, inclusive, p. 540; cross-ints. and ans. 443, 444, 445, p. 539; Exhibit 30, p. 649.

The machine as made had but one doffer covered with zigzag strips, each strip about three inches wide.

Goulding's deposition, ints. and ans. 76, 77, 78, 79, pp. 476, 477; Exhibit 26.

Truman Clark's deposition, ints. and ans. 30 to 34, inclusive, p. 882.

Samuel G. Whiting, a witness for appellants, when asked to describe the machine speaks of it as having but one doffer with filleting in zigzag form.

Samuel G. Whiting's deposition, int. and ans. 9, p. 1157.

And in answer to int. 11, he says at one time they had two doffers but don't undertake to state when.

The patent granted to Whiting and Lowder June 25, 1824, says two doffers may be used but shows a preference for one doffer.

As actually tried by Lowder, we have seen when he set up machinery for Truman Clark, which Clark says was a failure, and which was in 1827, three years after the patent was granted, he used only one doffer.

Truman Clark's deposition, ints. and ans. 30 to 37, inclusive, p. 882.

The sliver from the Whiting & Lowder machine went into a box or can.

John Goulding's deposition, int. and ans. 178, p. 629.

John D. Cooper's deposition, p. 93.

Isaac C. Bosworth (appellants' witness), int. and ans. 7, p. 1153.

So the Whiting & Lowder machine was an admitted failure, and abandoned as such.

And Mr. Goulding's invention was, as we have seen, the first that made, in a practical, useful form, the long or perpetual roll.

He had, at Halifax, before he ever knew or saw or heard anything about the Whiting & Lowder machines, carding machines for making the long or perpetual roll.

John Goulding's deposition, int. and ans. 108, p. 481.

Even if all that was claimed by Winslow as having been done by him be conceded (but it is positively denied), it was but a mere naked suggestion and only of a small part of the great scheme that Goulding had in view; only a solitary suggestion of a means of accomplishing a part of one step in a series of operations, the grand object of which taken together was to produce yarn from wool.

David Lane testifies, as we have before seen, that in 1841 or 1842, George L. Pierce had a conversation with him at the Middlesex Mills. They were both then working on the Goulding machinery there, and all that Pierce then claimed that Winslow had done was that he had made a single suggestion to Goulding after Goulding had got his invention so far completed as to get the drawing off the card. Goulding had got the spool and drum on the cards, and got the spool and the drum on the jack and seemed to be stopped, and then at that point Winslow suggested to Goulding, to get the roving off in the same way that he got it on. That Pierce at that conversation said Goulding would have thought of it himself in a little while and that Goulding's invention was a great invention, and that he had never been adequately paid for it.

David Lane's deposition, pp. 766, 767, 768.

This shows the extent of the pretended claim of Winslow at that time. It was some years after the meeting of the woollen manufacturers in 1837. This conversation was introduced to contradict Pierce

and to show how the pretended claim had grown since. But there is no evidence to show that Winslow ever made any suggestion of the kind. Pierce don't testify that he ever heard the suggestion, and all it amounts to is that Pierce then had such conversation. If he ever heard Winslow make such suggestion, or had known anything of it, he certainly would have been interrogated on that point and testified on that point, but he did not testify to any such thing, and the inference is irresistible that he never heard any such thing.

The essentials of the invention are fully set forth by Mr. Hibbard and Mr. Renwick.

> Hibbard's second deposition, ints. and ans. 7 to 22 inclusive, pp. 908 to 912.
>
> Edward S. Renwick's second deposition, ints. and ans. 7 to 17 inclusive, pp. 892 to 895 inclusive; ints. and ans. 39 and 40, p. 900.

So that if all that was claimed by Pierce as Winslow's invention was in fact done by Winslow, it would not and could not detract from Mr. Goulding's claims as the first and original inventor.

If Winslow ever supposed he had invented any part of what is claimed by Goulding, why did he not apply for a patent?

It has been seen that when he left Goulding he was on bad terms with Goulding. He left Mr. Goulding's employment June 16, 1825.

> George L. Pierce's first deposition, ints. and ans. 4, 5, p. 86.
>
> John Goulding's deposition, int. and ans. 141, p. 486.

This was some time before Mr. Goulding obtained his patent. There was ample time for Winslow to have applied for a patent. Mr. Goulding went to Europe, December 13, 1825, and returned in April 1826 and then proceeded to apply for his patent.

> John Goulding's deposition, int. and ans. 123, p. 483; cross-int. and ans. 762, p. 579.

Hence a number of months elapsed in which Winslow could have applied for a patent before Goulding applied; but he takes no proceedings to assert any rights, if he had any, which never would have been the case, had he been entitled to any part of the invention, more especially as he was hostile to Goulding. While, on the other hand, Goulding was active in asserting his rights and getting his patent.

Pierce and Cooper's testimony, and the other testimony in this case relied upon by the appellants to show that Winslow had anything to do with the invention, is entirely inconsistent with Winslow's conduct.

Seventh. Another defence alleged is that the invention and material and essential parts thereof are described in certain British patents set forth in the answer. Upon only two of these has any evidence been adduced, viz: in relation to the patent to John Royds, enrolled Nov. 11, 1786, marked Exhibit T, and the patent to James White, enrolled January 10, 1821, marked Exhibit U.

The testimony in relation to these comes from Mr. Stetson, appellants' expert, and Mr. Hibbard and Mr. Renwick, appellee's experts.

T. D. Stetson's deposition, ints. and ans. 32 to 36 inclusive, pp. 295, 296; cross int. and ans. 12, p. 300.

E. S. Renwick's deposition, ints. and ans. 34 to 38 inclusive, pp. 898, 899, 900.

Wm. C. Hibbard's deposition, ints. and ans. 37 to 42 inclusive, pp. 915, 916.

But it is unnecessary to continue an examination of these British patents of Royds and White, as Mr. Stetson, the appellants' own expert, admits that there is not in either of them either of the entire combinations claimed in Goulding's patent.

T. D. Stetson's deposition, cross-int. and ans. 12, p. 300.

As to the copies of the other British patents put into the case, in reference to no one of which has any evidence been offered, we submit that neither contains any one of the combinations claimed by Goulding, and we presume the appellants place no reliance upon them.

Eighth. A number of early suits brought by Goulding have been introduced into the case. Such evidence, we contend, is wholly incompetent and inadmissible.

If the Court should, however, be of opinion that this evidence is admissible, or of the slightest relevancy in this case, we beg leave to submit the following suggestions.

The first suit was against Ephraim H. Bellows, as we have already seen (the writ in which was dated September 27, 1827), in which a nonsuit was entered, May 18, 1829.

Exhibit L. p. 273.

The next suit was against Benj. Bussey; writ dated September 29, 1827.

Exhibit F, p. 272.

The next suit was against Nathaniel Stevens; writ dated March 12, 1829.

Exhibit H, p. 272.

The next was against Harris McFarlane; writ dated March 23, 1829.

Exhibit I, p. 273.

The next suit was against Amos Hill; writ dated March 23, 1829.

Exhibit K, p. 273.

The next suit was against John Marland; writ dated March 24, 1829.

Exhibit J, p. 273.

The next suit was against Ichabod Washburn and Benj. Goddard; writ dated March 27, 1829.

Exhibit G, p. 272.

The next suit was against Benj. F. Smith; writ dated April 28, 1832.

Exhibit N, p. 276.

The next suit was against John Leland and George Sabin; writ dated August 27, 1833.

Exhibit O, p. 276.

And the next suits were all brought after the reissue of 1836 was granted, and gave rise to the manufacturers' meeting which has been previously alluded to. The suits being against Effingham L. Capron, writ dated Aug. 30, 1836; against Silvanus Holbrook, writ dated Aug. 29, 1836; and against Wm. B. Fox and Geo. T. Rice, the writ dated Aug. 29, 1836.

The first suit was against Ephraim H. Bellows, and about the same time a suit was brought against Benj. Bussey.

We have already seen that the suit against Bussey was to be tried first, and that Bellows' suit was to abide the result of that suit. That Mr. Goulding made all the necessary preparations to try the Bussey suit, when Mr. George H. Kuhn, representing Bussey, proposed to settle it. That Mr. Goulding was very anxious for a trial, and told Mr. Kuhn he was apprehensive that if he, Goulding, settled the Bussey suit, Mr. Dunn, who had charge of the defence of the Bellows' suit, would not be ready to try it. Mr. Kuhn assured him that Dunn would be ready, and upon that assurance, Mr. Goulding and Mr. Kuhn settled the Bussey suit, Mr. Kuhn paying Mr. Goulding seven hundred dollars damages. That thereupon Dunn made an affidavit that he was not ready, as he relied upon the Bussey suit being tried, and obtained a continuance on that ground. That at the next term of the Court, Mr. Goulding's circumstances had changed. He was too poor to try the case, and it was therefore abandoned.

John Goulding's deposition, pp. 487, 488, 489, 490.

George H. Kuhn's deposition, cross-ints. and ans. 11 and 12, p. 134.
Exhibit 33, p. 659.
Exhibit 34, pp. 660, 661.

Goulding was so poor that the defendant in the Bellows case did not think it worth while to have a bill of costs against him.

Exhibit L, p. 273.

It is a significant fact that Bussey, who above all other men would have known who was the real inventor, and whose mill Goulding hired, and where he made many of his experiments, and where he completed his invention, and which mill Bussey himself afterwards occupied and carried on from Dec. 1825, and whose residence was within five miles of Dedham, should have paid the royalty, if Winslow had had anything to do with the invention. The suit against Bussey was on the Patent of Aug. 24, 1827.

George H. Kuhn's deposition, pp. 132 to 134.
Exhibit F, p. 272.

Now, by referring to the claims in this patent of Aug. 24, 1827, we shall find that they had reference to the jack alone, and it was claimed by Pierce in his conversation with Lane that Winslow's alleged invention related to that. Bussey and Kuhn would have been the last men to have settled, if Winslow in fact had had any meritorious claim.

The five suits, one against Nathaniel Stevens, the one against Harris McFarlane, the one against Amos Hill, the one against John Marland, and the one against Washburn and Goddard, all brought in March, 1829, were never entered in court. Two of these suits — the one against McFarlane and the one against Amos Hill, were brought also on a patent for scouring and washing all kinds of cloth.

No attorney's name appears on the backs of these writs; only Mr. Goulding's name.

Exhibits G, H, I, J, K, pp. 272, 273.

Mr. Goulding states that an agreement was made by Washburn and

Goddard with him, by which they agreed to pay a royalty on each set of machinery, and they were to have a license. Mr. Goulding was to go to their place of business at a certain time and have the writings prepared. Mr. Goulding went accordingly, and Washburn then told Goulding that the manufacturers of the goods had given him a bond of indemnity and that he was to go on and build the machinery.

John Goulding's deposition, ans. to cross-int. 889. pp. 601, 602.

This same Mr. Washburn years afterwards, viz., Feb. 12, 1862, wrote by his wife a letter to Mr. Goulding to be used before the Committee on Patents, in favor of the extension of Goulding's patent (p. 705).

John Goulding's deposition, int. and ans. 173, p. 492.

That letter is as follows:

"WORCESTER, Feb. 12, 1862.

JOHN GOULDING, ESQ.:

Dear Sir, — At the request of my husband, who for many months has been unable to read or write, I will give an expression to his views in reply to your letter of February 10th.

Mr. Washburn has been intimately acquainted with you for more than thirty years, and has always regarded you as a man of strict integrity and high moral worth. He has valued you as a good, practical mechanic, possessing more than ordinary amount of inventive genius. Many years ago you claim to have invented an important improvement in the manufacture of woollen and other fibrous materials, consisting mainly in the substitution of the long roll for the old short one (denominated the condensed roll), which was performed by a condenser attached to the finishing doffer of the carding machine, resulting in the production of what is called the endless roll. I am not as competent to judge of the great saving of labor in the manufacture of these materials as the manufacturer would be, but so far as my observation extends, I do not hesitate to say that it is the greatest improvement introduced in the production of woollen goods during the last forty years. It is my opinion that it is universally used and has been for many years. I am unable to say what remuneration you have received for what you claim as your invention, but presume, from what

I have known of your pecuniary ability, that it has been very inadequate to the real value of the improvement to the community.

Mr. Washburn's health is such, as to preclude the possibility of compliance with your request to confer with manufacturers or others upon this matter.

Hoping that this statement will meet your wishes and be all that you need,

I remain as ever, yours truly,

ICHABOD WASHBURN."

Mr. Goulding says his poverty was the reason why the suits were not prosecuted.

John Goulding's deposition, pp. 487 to 492; cross-ints. and ans. 888, 889, p. 601; cross-int. and ans. 894, p. 602; cross-ints. and ans. 1020 to 1025, pp. 620 to 622; cross-ints. and ans. 1049, 1050, 1051, p. 626; cross-int. and ans. 1052, p. 627; cross int. and ans. 999, p. 617; direct ints. and ans. 211 to 221, pp. 635, 636, 637.

His testimony on this point is fully confirmed.

Isaac Thayer's deposition, int. and ans. 3, p. 758; ints. and ans. 17, 18, 19. pp. 760, 761; int. and ans. 24, p. 764; cross-ints. and ans. 26, 27, p. 765.

John S. Hubbard's deposition, pp. 449 to 456, inclusive.

Mr. Goulding took the benefit of the insolvent laws of Massachusetts, May 1, 1839, and obtained a discharge.

Pages 661, 662, 666, 667, 668.

His total assets amounted to $798.25, p. 668. His schedule of debts shows a total indebtedness of $27,000.

Page 665.

The suit that was brought against Benj. F. Smith was on patents of June 11, 1829 and July 21, 1829.

Goulding was so poor at that time, that the defendant moved that he should give security for costs.

Exhibit N, p. 276.

This suit did not involve anything that any one claims that Winslow had any connection with.

The claim in the patent of June 11, 1829, is as follows:

"That part which I claim as my invention is the application of the aforesaid rollers, I I, covered with cards, to take the wool or other fibrous material from the doffer and deliver it to the tubes; and also the said rollers, J J J J, being fluted to match into each other so as to form a sort of jaws to bring forward the wool or other fibrous material through the tubes, Q Q."

Pages 286, 287.

The claim in the patent of July 21, 1829, is as follows, viz:

"That part which I claim as new and as my invention and for which I herein claim Letters Patent, is the following, that is to say, it consists in the crossing of the wool while it is delivering from the card and before it is carried through the tube." — p. 286.

The reason why this case was nonsuited was, that Mr. Goulding undertook to get, himself, without the aid of counsel, proof of infringement by deposition, and it was not properly taken.

John Goulding's deposition, ints. and ans. 157, 158, 159, 160, pp. 490, 491; cross-ints. and ans. 1004, 1005, 1007, pp. 618, 619; cross-ints. and ans. 205, 206, p. 634.

Henry Goulding testifies that he has no recollection of giving any such deposition.

Henry Goulding's second deposition, pp. 1127, 1128.

He undertakes to swear positively that the suit was tried in 1833 or 1834.

Henry Goulding's second deposition, cross-ints. and ans. 13 to 18 inclusive, p. 1130.

In fact it was tried in 1832. — Exhibit N, p. 276.

He don't recollect on what patents the suit was brought, although he was a partner of the defendant Smith at the time.

H. Goulding's deposition, cross-ints. and ans. 26 to end of his deposition, pp. 1131 to 1134 inclusive.

This same Henry Goulding has been a large infringer.

H. Goulding's deposition, cross-ints. and ans. 19, 20, 21, 22, 23, pp. 1130, 1131.

Judge Merrick was called by the appellants, and he has no recollection of taking such a deposition. It may be Mr. Goulding is mistaken as to the person before whom the deposition was taken, and it is quite as probable that Judge Merrick would not recollect it.

If there had been a full trial on the merits of this case, there would have been a verdict, but there was not, but a nonsuit, which fact shows that it was not understood either by Court or defendant's counsel, as a full trial. The case was opened to the jury; and Henry Goulding says while one man was testifying, it was stopped.

H. Goulding's first deposition, ints. and ans. 7, 8, 9, 10, p. 125. Exhibit N, p. 276.

Edward Winslow did not testify at that time, and no one pretends that he did.

John Goulding's deposition, int. and ans. 161, p. 491.

Goulding's testimony agrees with Henry Goulding's as to the termination of the trial. Goulding says he called Boyden, who professed to know that Smith had made the infringing machinery, and when he put him on the stand, he testified he did not know it, and thus his deposition having failed, and Boyden too, he was left without any proof of infringement.

If there had been a fair trial or a full trial on the merits, the defendant's counsel would undoubtedly have insisted on a verdict.

But what confirms this view is the fact that this very defendant,

Smith, subsequently travelled through the country collecting royalty for Goulding, under his patent.

John Goulding's deposition, ints. and ans. 164, 165, 166, p. 491; cross-int. and ans. 1044, p. 625.

And to show further that this trial was not recognized by Henry Goulding as any test trial, he admits that after Goulding got his reissue of July, 1836, he entered into a written contract with Goulding, to pay him what other machinists did, if he substantiated his patent. Goulding called upon him to pay, and he refused to pay because others did not pay.

Henry Goulding's first deposition, ints. and ans. 21 to 25 inclusive, p. 127.

Mr. Goulding we have seen also brought a suit against Leland & Sabin, in Aug. 1833, entered N. P. May, 1835. This suit was also on a patent of Goulding's, for improvement in throwing shuttles in weaving.

Exhibit O, p. 276.

Mr. Goulding says he failed to try that suit for want of means (Jno. Goulding's deposition, int. and ans. 162, p. 491), and he gave Leland and Sabin a release and license, because, he says, it was the best terms he could make with them to get rid of paying costs or being put in jail on the execution for costs.

John Goulding's deposition, int. and ans. 162, p. 491.

The very license which is produced by Sabin in his deposition, Exhibit C, p. 140, shows that Goulding claimed the right; and the right is recognized by Leland and Sabin in that paper. It is a license. If Leland & Sabin were satisfied Goulding had no rights, why insist on a license from him? It is a full recognition of Goulding's claim; and he not only licenses them to use the cards and jacks, but also a loom, all which clearly shows that he was struggling under the weight of poverty and was in their power. There can be no pretence that he was not entitled to his loom patent, but we have seen that he granted them a license to use that also.

The other suits were brought when he obtained his reissue of 1836, and those suits were settled and his claims recognized by the manufacturers. We thus find Mr. Goulding at all times insisting upon his patents, never abandoning them in any instance, although oppressed with poverty, and having the whole manufacturing interests to contend against him, asserting his rights whenever he could get money to do it; and then, when his patent expires, and he fails by wrong information from the Commissioner of Patents to get an extension, persistently applying to Congress for an enabling Act, until he is finally rewarded with success. But of what possible materiality can these suits be? Suppose he had failed on the merits in every one of them, it would be no answer to this suit.

Ninth. Another defence set up is as before stated.

1. That, at the time of the application for a patent, the invention was and had been for a long time on sale and in public use, with Mr. Goulding's consent and allowance; and

2. That he abandoned the same to the public.

The allegation in the answer is as follows:

"And further answering, this defendant says that at the time of the application of the said Goulding for a patent, the said invention was, and for a long time had been, on sale and in public use, with his consent and allowance, and that he abandoned the same to the public."

It is not alleged that such sale or use "had been *for more than two years prior to such application for a patent*," nor is it alleged *when* Goulding made the application referred to, nor *when* the alleged use or sale took place, and so no such defence is open on the record.

The 7th section of the act of 1839 applies to *all* patents, whether granted before or after its date.

McClurg *vs.* Kingsland, 1 How. 202.

Stimpson *vs.* West Chester R. Road, 4 How. 380, 388, 389, 392, 399, 400 to 404, inclusive.

The defence that "he abandoned the same to the public" can be made out only by showing an *intention* to abandon, accompanied by sufficient acts of abandonment; the law does not favor forfeitures, and their grounds must be precisely averred and clearly proved.

Pitts *vs.* Hall, 2 Blatch. 235 to 238, inclusive.

And the acts relied on must have reference to the machine *substantially as patented.*

Wyeth *vs.* Stone, 1 Story, 281.

This defence we will consider under three different aspects.

1. In respect to the question as to the legal effect, if proved, of a sale or public use of the invention short of two years before the application, and the proof on this point.

2. With reference to the general question of alleged abandonment.

3. If the defendants, under their answer, have a right to show a sale or sales more than two years before the application (and we deny that any such defence is open under the answer, as it nowhere alleges a sale more than two years before the application), what proof is there on this point? And, in this connection, it is proper to remark here that all the evidence on this branch of the case was objected to, and the cross-examination by appellee, and the introduction of evidence by him, were all *de bene esse.*

First, in respect to the use or sale prior to the application. The original patent, as we have before seen, was granted Dec. 15, 1826.

The only alleged sales in respect to which there is any evidence are, an alleged sale to Esek Pitts, one to Truman Clark, and one to Benjamin Bussey.

We shall hereafter see that the sale to Pitts was not of the perfected machinery, but that it was incomplete and imperfect. That the sale to Truman Clark was not until 1828; some two years after the patent was granted. That there is no evidence that the machinery sold to Bussey, which is alleged to have been in December, 1825, contained the patented invention; and we respectfully submit that there is

no evidence in the case which proves any sale of the patented invention before the application for the patent.

We also submit that the patentee had a right to sell his machinery, perfected and complete, for two years before the time of his application, without in any manner impairing or affecting his rights under his patent.

It is unnecessary to consider in this case the effect of a sale if made by the patentee more than two years before his application, as there is no evidence to show any such sale.

The patentee had clearly the right to sell machinery containing his invention at any time not exceeding two years before his application.

This patent was in force when the law of March 3, 1839, was enacted. The original term had not then expired.

5 Stat. at Large, ch. 88, sect. 7, p. 354.

The language of this section is as follows, viz.:

"That every person or corporation who has, or shall have purchased or constructed any newly invented machine, manufacture, or composition of matter, prior to the application by the inventor or discoverer for a patent, shall be held to possess the right to use, and vend to others to be used, the specific machine, manufacture or composition of matter so made or purchased, without liability therefor to the inventor, or any other person interested in such invention; and no patent shall be held to be invalid by reason of such purchase, sale, or use, prior to the application for a patent as aforesaid, except on proof of abandonment of such invention to the public; or that such purchase, sale, or prior use, has been for more than two years prior to such application for a patent."

This section, as we have before seen, did not relate merely to patents granted after the passage of the act, but also applied to and protected

patentees whose patents had been granted before and were in force at the time of the passage of the Act.

McClurg *vs.* Kingland, 1 Howard, 202.

Stimpson *vs.* West Chester R. R., 4 Howard, 380, 388, 389, 392, 399, 400 to 404 inclusive, both cited ante.

This brings us to the consideration of the next branch of this defence, viz.:

The general allegation of abandonment.

There is no evidence whatever which sustains this allegation.

Goulding swears that he never abandoned or intended to abandon his invention, and his whole conduct shows a persistent assertion of his rights.

In the sale to Pitts and to Bussey it was distinctly understood that he was to get a patent. Buffum testifies that Goulding was to let Pitts have another jack without Pitts paying him *any patent fee* on account of it.

John Goulding's deposition, ints. and ans. 122, 123, 124, 125, p. 483.

Moses Buffum's first deposition, cross-int. and ans. 3, p. 943.

George H. Kuhn's deposition, cross-ints. and ans. 3, 4, 5, p. 133.

John D. Cooper's deposition, cross-ints. and ans. 167, 168, p. 114; ints. and ans. 26 and 27, p. 122.

Neither Bussey, Kuhn, Pitts or Buffum ever supposed Goulding abandoned the invention.

When Bussey was sued long afterwards by Goulding, we have seen that he paid him the royalty.

Kuhn's deposition, cross-ints. and ans. 11, 12, p. 134.

We will now pass to the consideration of the question whether there is any proof of a sale more than two years before the application. We submit there is not.

We will first consider the alleged sale to Esek Pitts.

Goulding says the invention was not complete.

Int. and ans. 126, p. 483; cross-int. and ans. 537, p. 551.

Moses Buffum says, in describing the machinery, that it consisted of a double carding machine and a single carding machine and roller jack. Speaking of the double machine, his evidence is that the wool was fed on in divisions and came out on a large drum — that it was all wound round a large drum in the form of a lap or bat, but without divisions. It was then broken off and fed to the single machine in divisions.

Moses Buffum's deposition, int. and ans. 8, p. 939; cross-int. and ans. 38 and 39, p. 946.

There was then no creel, or spool or bobbin, from which either carding machine was fed, but the lap was broken into pieces about six feet long, four and a half inches wide, and an inch thick, and these pieces fed into the single card. There was no continuous roll fed into the single machine, and the feeding on the double machine was a common feed-table.

Moses Buffum's deposition, ints. and ans. 9 and 10, p. 940.

Wm. Bacon's deposition, cross-ints. and ans. 34, 35, 36, p. 1296.

So far, then, the mode of taking the sliver from the breaker, or double machine, was not in any manner like the patented process. There was no condensation, no tube or its equivalent, no spool nor drum, no traverser, but only a large drum, three feet in diameter at the delivering end of the machine.

Moses Buffum's deposition, int. and ans. 9, p. 940.

It must be admitted, then, that there was on this double machine no part of the patented invention.

We will now examine the single machine. It had no creel or bobbin, but the lap, which, as it left the double machine, was wound on this large drum, was torn off in pieces six feet or more long, four and a half inches wide, and about an inch thick, and fed, not in one continuous sheet to the single machine, but in three separate sheets or strips through partitions.

Mr. Buffum describes the mechanism on the single machine after the wool left the doffer. He says there was a rack setting up between where the apron revolved and the drum on which the spool laid, made of wires sticking into wood, which condensed or contracted the roving as it came from the leather apron, which vibrated and conducted the roving on to the spool or spools.

Buffum's deposition, cross-int. and ans. 50, p. 947.

Mr. Goulding nowhere in his patent describes any rack which condensed or contracted the roving.

In his patent the roving is condensed and contracted by entirely different means than a rack.

Mr. Buffum nowhere swears that there was more than one doffer on this single machine.

Buffum's deposition, cross-ints. and ans. 43, 50, p. 947, cross-int. 51.

Buffum nowhere swears that the spool was a long spool.

He nowhere swears that there were two spools on this machine.

Int. and ans. 14, p. 941.

William Bacon and Arnold Smith both run this single machine, and were entirely familiar with it; and they both testify that it had but one doffer and that was a full clothed doffer and *not a ring doffer.*

Wm. Bacon's deposition, ints. and ans. 1, 2, 3–15, 16, 17, 18, 19, pp. 1291, 1292, 1293; cross-ints. and ans. 43, 44, 45, 46, p. 1297; direct int. and ans. 20, p. 1298.

His second deposition, p. 1446.

Arnold Smith's deposition, ints. and ans. 4, 5, 6, p. 1444; also cross-ints. and ans. 124, 125, 126, p. 1290; int. 16, pp. 1276, 1277.

Mr. Goulding describes clearly, in his patent, two ring doffers on his finisher, that is, two doffers with alternate rings of card fillet and alternate spaces.

The testimony shows that the single machine which Esek Pitts had of Goulding did not have two ring doffers but had only one doffer, and that was fully clothed with card.

So that it cannot be contended or claimed that either the double carding machine or the single carding machine which Pitts had of Goulding, contained or embodied the invention which Goulding afterwards arrived at and described in his patent.

Now as to the jack which Pitts had of Goulding. No witness except Buffum gives any description of it.

He says it was the same in principle and operation as the jacks now in use known as Goulding's; that it was every way the same with regard to movements. He nowhere describes in detail its mechanical construction. Buffum is not an expert. He is not a mechanic, and he is not competent to speak upon a question of identity or dissimilarity of principle.

Buffum's deposition, cross-int. and ans. 58, p. 949.

He is attempting to speak here accurately of a machine that came to Pitts' mill forty years ago, and after he has since seen and become familiarized with the present style of jacks, and when his recollection of that machine must necessarily be colored and affected by what he has seen since.

How can the Court say by this vague, loose testimony of a witness who is not a mechanic,— not an expert,— that this jack embraced the invention claimed as new in the last claim of the reissue?

It appears that at some subsequent time Pitts got other jacks at his mill.

Buffum's deposition cross-ints. and ans. 51, 52, 53, 54, p. 948.

May not Buffum have confounded this first jack with the subsequent ones? He had no reason for remembering that in particular.

The patentee claims "*a mule, or spinning frame, provided with spindles*

mounted on a carriage, and with jaws, or their equivalents, for retaining roving in combination with bobbins whose axes are parallel, or nearly so, with the line of spindles, and rest upon drums revolving to unwind the bobbins, the combination being and operating substantially as hereinbefore set forth."— p. 34.

The only description that Buffum gives of the jack in question is the loose general description before referred to. He says the spool was taken when full and placed upon a drum in the jack, and these spools were emptied by turning off the roving as it was spun through the rollers.

Buffum's deposition, int. and ans. 11, p. 940; int. and ans. 12, p. 941.

He nowhere shows that the axes of the bobbins were parallel, or nearly so, with the line of spindles, or that the spindles were mounted on a carriage, or that there were jaws or their equivalents for retaining the roving, or that the bobbins were long bobbins.

Wm. C. Hibbard's second deposition, ints. and ans. 7, 8, 9, pp. 908, 909.

Edward S. Renwick's second deposition, ints. and ans. 7, 8, 9, p. 892.

The sale relied on must have reference to the invention substantially as patented.

Wyeth *vs.* Stone, 1 Story, 281.

The evidence of Buffum, if taken to be entirely reliable, fails to show that the machinery sold by Goulding embraced the invention subsequently attained and patented by him, or any substantial or material part thereof.

Forfeitures are not to be favored.

A party who asks the Court to declare a forfeiture of a patentee's rights, must affirmatively prove, clearly and conclusively, the grounds of forfeiture. He cannot rely upon an inference.

But how long before Mr. Goulding's application for his patent did Pitts get this machinery? And on this point the burden of proof is also on the appellants.

Buffum, in his first deposition, does not state when this machinery was either purchased or delivered. His first deposition was given Aug. 15, 1865.

All he says is that it was in 1824 and before the last of November 1824.

Buffum's deposition, ints. and ans. 16, 17, 18, p. 941.

The only reason why he thinks it was before the last of Nov., 1824, is, he says, that Cooper went to Pitts to work these machines before the last of Nov., 1824.

Buffum's deposition, ints. and ans. 18, 19, 20, p. 941.

He alleges that he thinks this machinery had been purchased or traded for three or four weeks before Nov. 23, 1824, or before Cooper went there to work. His whole testimony is based upon the date when Cooper went there to work. He has no recollection as to the time.

John D. Cooper had undoubtedly told Buffum, or Buffum had seen his, Cooper's, testimony to the effect, that Cooper went there to run this machinery. Cooper had testified to that, March 13, 1865, some five months before Buffum testified, and Buffum probably thought Cooper's statement true, and upon referring to his day books and finding a charge Nov. 23, 1824, against Cooper, he was induced to think that if Cooper was there Nov. 23, 1824, the machinery must have been there before.

Cross-ints. and ans. 17, 18, 19, p. 944; ints. and ans. 19, 20, 21, pp. 941, 942.

There is no book produced with any entry in regard to this machinery, and the book upon which Buffum relies is the day book of the country store carried on by Pitts in which charges are made against Cooper.

Buffum's memory is very unreliable. In his first deposition he

recollected no person who worked in the mill at the time Cooper was there except Arnold Smith.

Buffum's deposition, cross-ints. and ans. 25, 27, 28, 30, p. 945.

It is clearly proved that Cooper did not go to Pitts' Mill to run this machinery, and that he did not run it. That Arnold Smith had charge of it. That Cooper run the billy at Pitts', thus doing exactly the same kind of work that he previously did at Goulding's. That Arnold Smith was superintendent and had charge of the mill and Cooper was under him.

Deposition of Arnold Smith, ints. and ans. 1, 2, 3, 20, 21, 23, 24, 25, 28, 29, 30, pp. 1275, 1277, 1278; cross-ints. and ans. 21, 22, 23, 24, p. 1281; cross-ints. and ans. 132, 133, pp. 1290, 1291.

Deposition of Wm. Bacon, ints. and ans. 1 to 18 inclusive, pp. 1291, 1292, 1293, 1294; cross-ints. and ans. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, pp. 1293, 1294.

Deposition of Mrs. Caswell, cross-int. and ans. 1, p. 1466.

Deposition of John Goulding, int. and ans. 52, pp. 471, 472; cross-int. and ans. 368, p. 530; cross-int. and ans. 617, p. 561.

J. D. Cooper's second deposition, cross-ints. and ans. 80, 81, 82, 85, p. 1182.

It is also clear that Arnold Smith understood this machinery and how to run it, and had no difficulty with it, and therefore the theory that Cooper was hired to run it because the hands did not understand it, utterly fails.

Arnold Smith's deposition, ints. and ans. 28, 32, p. 1278; ints. and ans. 2, 6, pp. 1443, 1444.

Cooper did not leave Goulding to take charge of this machinery. He left suddenly, having had some trouble with Mr. Goulding.

Deposition of George L. Pierce, cross-int and ans. 4, p. 88.

Besides Cooper received from Mr. Goulding a dollar a day and over and board.

Deposition of John D. Cooper, cross-int. and ans. 8, p. 97.

While at Pitts & Buffum's, he got only $24 dollars per month, and paid his board himself.

Deposition of John D. Cooper, int. and ans. 5, p. 1160; cross-int. and ans. 54, p. 1179.

Would not Cooper, if he had been hired by Pitts & Buffum on account of any peculiar knowledge he had in relation to this machinery, have received as much as he did at Goulding's, or more? Would he have left Goulding and gone elsewhere, at very much less wages, had there been no trouble? Would he have left voluntarily? If he had particular skill as to this machinery, he could have commanded a larger salary than Goulding was paying him.

Deposition of John D. Cooper, cross-int. and ans. 58, p. 1180; cross-int. and ans. 124, p. 1186.

The statement by Cooper, that he gave information to Arnold Smith in relation to running this machinery, is false.

Arnold Smith's second deposition, int. and ans. 2, p. 1443.

Arnold Smith testifies that he assisted in getting into the mill the cards and jack in question that came from Goulding's. He states what they were, that they were all received at the same time at the mill. That they came there the latter *part of Dec.*, 1824, *or fore part of January*, 1825. That they came there after Cooper did — three or four weeks after. That he, Smith, moved Nov. 24, 1824, out of one house into another where Cooper lived. That this machinery had not then come to the mill. That it was cold weather when it came there, and had snowed

recollected no person who worked in the mill at the time Cooper was there except Arnold Smith.

Buffum's deposition, cross-ints. and ans. 25, 27, 28, 30, p. 945.

It is clearly proved that Cooper did not go to Pitts' Mill to run this machinery, and that he did not run it. That Arnold Smith had charge of it. That Cooper run the billy at Pitts', thus doing exactly the same kind of work that he previously did at Goulding's. That Arnold Smith was superintendent and had charge of the mill and Cooper was under him.

Deposition of Arnold Smith, ints. and ans. 1, 2, 3, 20, 21, 23, 24, 25, 28, 29, 30, pp. 1275, 1277, 1278; cross-ints. and ans. 21, 22, 23, 24, p. 1281; cross-ints. and ans. 132, 133, pp. 1290, 1291.

Deposition of Wm. Bacon, ints. and ans. 1 to 18 inclusive, pp. 1291, 1292, 1293, 1294; cross-ints. and ans. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, pp. 1293, 1294.

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Deposition of John D. Cooper, cross-int. and ans. 8, p. 97.

While at Pitts & Buffum's, he got only $24 dollars per month, and paid his board himself.

Deposition of John D. Cooper, int. and ans. 5, p. 1160; cross-int. and ans. 54, p. 1179.

Would not Cooper, if he had been hired by Pitts & Buffum on account of any peculiar knowledge he had in relation to this machinery, have received as much as he did at Goulding's, or more? Would he have left Goulding and gone elsewhere, at very much less wages, had there been no trouble? Would he have left voluntarily? If he had particular skill as to this machinery, he could have commanded a larger salary than Goulding was paying him.

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previously, that it came there in the evening, that it was there in the morning when he went to the mill.

Arnold Smith's deposition, ints. and ans. 5 to 18 inclusive, pp. 1275, 1276, 1277; also, int. and ans. 33, p. 1291; cross-ints. and ans. 61, 62, 63, 64, 68, 69, 72, 73, 74, 75, pp. 1284, 1285; also, cross-ints. and ans. 91, 92, 93, p. 1287; cross-ints. and ans. 98, 99, p. 1287.

This statement of the time when the machinery was received at Pitts' mill is confirmed by Edmund Bacon.

See, also, Edmund Bacon's deposition, ints. and ans. 1, 2, 3, 4, 21, 22, pp. 1429, 1430, 1431, 1432.

The fact that Millville (then called Mendon), where the mill of Pitts & Buffum was, was thirty miles from Dedham (int. and ans. 4, of Wm. Bacon, p. 1291), would make it extremely probable that the team which carried the machinery would leave Dedham in the morning, so as to reach Mendon by night, and not leave Dedham so late in the day as to be on the way at night; and the team, leaving Dedham in the morning, would not arrive until probably in the evening, the distance being thirty miles and this kind of machinery very heavy. And the fact that the machinery laid out at the mill all night, and that the weather was snowy, and very likely to injure the machinery, would be a fact that would be impressed on Smith's mind.

Henry Jones is called to testify to a conversation with Arnold Smith; but Smith was not asked if such conversation occurred, and, therefore, Mr. Jones' testimony was not admissible.

Mrs. Eliza Caswell (formerly Eliza Farnum) commenced, by the time book of Pitts & Buffum, to work for them in 1823, and continued through 1824. She recollects a circumstance in relation to herself and Mary Slone, which shows that the jack was not there when Mary Slone commenced to work there.

Eliza Caswell's deposition, pp. 1465, 1466.

Mary Slone, by the time book of Pitts and Buffum, did not commence to work at Pitts & Buffum's until December 9, 1824, so that the jack

could not have been there then. Hannah Tripp, appellants' witness, shows that Mary Slone worked in the spinning-room.

Cross-int. and ans. 14, 15, p. 1462.

Now, after Arnold Smith and Wm. Bacon had testified, showing that Cooper had nothing to do with the machinery obtained from Goulding, but did at Pitts & Buffum's precisely the same work he had previously done at Goulding's, viz., run the billy, Mr. Buffum entirely changes his tactics.

He did not, in his first deposition, recollect the name of any person employed by Pitts & Buffum, except Arnold Smith and Cooper.

Moses Buffum's first deposition, cross-ints. and ans. 25, 27, 28, 30, p. 945.

But as Smith testified, in his deposition, that Olive Prentiss was the first person that spun on that jack,

Int. and ans. 22, p. 1277,

and that he did not recollect her working till the jack was there, and he thought Pitts & Buffum hired her to work on these machines,

Cross-ints. and ans. 14, 15, p. 1280,

(not that she did not in fact do other work before, but that he did not recollect her doing other work before,) Buffum seizes upon this statement, and in his second deposition, given October 20, 1865, swears that Olive Prentiss was hired to spin on that jack, — that she was the first person employed on it, and commenced August 23, 1824. He pretends his time book aids him, but is compelled to admit that his time book does not show what any operative did.

Buffum's second deposition, cross-ints. and ans. 196 to 203, pp. 1372, 1373.

Buffum had previously sworn, as we have already seen, that the machinery came there about three weeks before Cooper did, and that Cooper came there before Nov. 23, 1824. Buffum, in his first deposi-

tion, had no reason, as he stated, for fixing the time when the machinery came there, except by the time when Cooper came there.

Moses Buffum's first deposition, ints. and ans. 16 to 19 inclusive, pp. 941, 942.

Now he attempts to fix it with reference to Olive Prentiss' commencement to work at the mill, completely abandoning his first theory, and that without any more light than he had upon giving his first deposition, and without his books affording him any information whatever as to the particular kind of work of any operative.

This last theory of Buffum's is not only at variance with his first statement as to time, but it is at variance with Cooper's statement: Cooper says when Pitts & Buffum bought the machinery, he agreed to go and run it in Nov. or first of Dec.

John D. Cooper's first deposition, int. and ans. 17, p. 96.

And in his second deposition he says he engaged to go there six weeks before he did go there, that it might be a little more.

John D. Cooper's second deposition, int. and ans. 6, p. 1160.

And he says he commenced to work there Nov. 19, 1824.

Int. and ans. 4, p. 1160.

If Buffum's last theory be correct, the machinery was there three months before Cooper went there, and yet Cooper says when the machinery was bought he engaged to go there in Nov. or by first of Dec. It is a little singular that he should engage so far ahead. Upon Cooper's theory, Olive Prentiss must have been at work months before the jack was there.

It will be seen, by the time-book of Pitts & Buffum, that Olive Prentiss went to Pitts & Buffum's Aug. 23, 1824, and that there was an interval of time from January 12, 1825, to January 31, 1825, that she did not work, and then she resumed work again; and it is highly probable that when she resumed work the last of January, 1825, she commenced for the first time to spin on this jack.

Edmund Bacon knew her, and also her father, well. He went to work for Pitts & Buffum middle of Nov., 1824 (the time-book says Nov. 14,

1824). He says at that time Olive Prentiss was *running a woollen jenny*, not the long roll jack.

Edmund Bacon's first deposition, ints. and ans. 1, 2, 3, 4, p. 1429, 1430; ints. and ans. 17, 18, 19, p. 1431; cross-ints. and ans. 61 to 68, p. 1437.

Lorinda Darling (formerly Lorinda Taft), who, by the time-book, commenced to work for Pitts & Buffum, Oct. 25, 1824, says that when she commenced to work there, she herself spun on a jenny; that there was no female in the carding or spinning-room at that time; that she knew Olive Prentiss, and that Olive Prentiss came into that room to spin some time after she went there. So, that by her testimony, Olive Prentiss did not commence to spin at all until some time after Oct. 25, 1824.

Lorinda Darling's deposition, ints. and ans. 1, 2, 3, 4, 5, 12, 13, 14, pp. 1466 and 1467.

She also says that there was but one set of cards there when she commenced.

Lorinda Darling's deposition, cross-int. and ans. 14, p. 1470.

Buffum says that there was only one set there before the machinery from Goulding came there.

Moses Buffum's deposition, cross-ints. and ans. 33, 34, p. 946.

It is incredible that Mr. Buffum, who remembered nothing when giving his first deposition, would afterwards remember what he testifies to. Was not his recollection as good in August as in October?

But it should be observed, that he nowhere swears that the first work Olive Prentiss did was to spin on this jack.

He says "she was hired to spin on that jack; she was the first person employed on it."

Moses Buffum's second deposition, int. and ans. 6, p. 1353.

She is now dead.

Cross-int. 194 (to Buffum), p. 1372.

If she was hired some time after she went there, even as late as January, 1825, to spin on this jack, and she was the first person who did spin on it, that would be consistent with this answer of Buffum, as he nowhere swears that when she was first hired, she was hired to spin on this jack.

But again, Mr. Buffum says that the Brewster spinning machine was a part of the consideration for the cards and jacks.

Moses Buffum's second deposition, ints. and ans. 11, 12, 13, p. 1354.

His statement as to the consideration is not very clear, but the fact undoubtedly is, that the Brewster spinning machine was a part of the consideration.

Lorinda Darling, by the time-book of Pitts & Buffum, commenced to work for them Oct. 25, 1824. The Brewster spinning machine was there *then*. *She never saw one elsewhere.*

Lorinda Darling's deposition, pp. 1466, 1467; also cross-ints. and ans. 22, 30, 31, 32, 33, 52, 53, 54, 55, 89, 92, 93, pp. 1470, 1472, 1474, 1477; ints. and ans. 16 to 24, pp. 1467, 1468.

Edmund Bacon testifies that he started for Pitts & Buffum the first power looms which they had. He says he commenced to work at starting these looms about the middle of Nov., 1824, and worked for about three months.

See his deposition, pp. 1429, 1430, 1431; also cross-ints. and ans. 38, 39, p. 1435; cross-int. and ans. 90, p. 1440; ints. and ans. 24, 25, 26, p. 1442; cross 100 to 104 inclusive, p. 1441; second deposition, p. 1459. Buffum's fourth deposition, cross 58, p. 1454; also, cross 69, p. 1455; cross 55, p. 1453.

By reference to Pitts & Buffum's time-book, it will be seen that he commenced Nov. 14, 1824, and left in January, 1825.

The Brewster was at Pitts & Buffum's *when he went there, and he never saw one anywhere else.*

Edmund Bacon's deposition, ints. and ans. 7, 8, 9, 10, 11, 12, 13, 14, pp. 1430, 1431; cross-int. and ans. 90, p. 1440; ints. and ans. 24, 25, p. 1442.

Arnold Smith testifies to its being there *as late as Nov.* 24, 1824.

Arnold Smith's deposition, cross-ints. and ans. 68, 69, 70, 71, 72, 73, 74, 75, p. 1285; cross 42, p. 1282.

Edmund Bacon says when he went there he thinks the Brewster stood in the ell part over the room where he was starting the power looms.

Edmund Bacon's deposition, int. and ans. 23, p. 1432.

Buffum says the Brewster was in the ell part of the room where Bacon afterwards started the power looms.

Buffum's fourth deposition, p. 1448.

It had probably been taken from the lower part of the ell into the upper part. This is also confirmed by Arnold Smith's deposition.

Arnold Smith's deposition, cross-int. and ans. 7, p. 1445.

Also by Lorinda Darling, ints. and ans. 6, 7, 8, 9, 10, 11, p. 1467; cross-ints. and ans. 19, 22, p. 1470; 51 to 55, p. 1474; 89 to 93, p. 1477.

So that it is clear that the Brewster spinning machine was at Pitts & Buffum's, Oct. 25, 1824, when Lorinda Darling commenced work there, and that it was there until sometime after Nov. 14, 1824, as it was in operation there when Edmund Bacon went there, and he afterwards recollects seeing it when it had been stopped and floating dust had settled upon it, and he also recollects seeing a girl and a man attending it. There was never more than one Brewster spinning machine at Pitts & Buffum's.

The appellants say that Noah Taft worked only till July 1823. The time-book shows work done by the day only. He worked there after but by the job, and that would not appear by time-book.

Arnold Smith's deposition, int. and ans. 3, p. 1443.

Therefore it is highly improbable that the machinery, cards and jack, could have been received from Goulding at Pitts & Buffum's mill in Aug. 1824, and the Brewster have been there after the middle of Nov. 1824, because the Brewster was given in part payment for the cards and jack.

George L. Pierce swears he saw a Brewster at Goulding's at Dedham, and he says Cooper was there then. But this witness did not leave Goulding's employment until late in June, 1825, and he supposed Cooper

left Goulding early in 1825, but as there is no connection between Cooper and the Brewster, and he never had anything to do with the Brewster, there is no reason why Pierce can say it was there when Cooper was, but it was probably there before Pierce left, which was not until June, 1825.

George L. Pierce, first deposition, int. and ans. 1, 2, 3, p. 86.
George L. Pierce, second deposition, cross-ints. 1, 6, pp. 1395, 1396; ints. 34, 35, p. 1399.

This witness' memory is good for little, and he can't recollect very recent dates.

Pages 1397, 1398, 1399; cross-ints. 1 to 4, p. 1397; pp. 1401, 1402, 1403.

Cooper says Seth Bonney operated the Brewster at Goulding's.

Cooper's deposition, int. and ans, 11, 12, p. 1161.

Why is Bonney not produced, if he could help appellants as to time?

Cooper's second deposition, cross-ints. and ans. 23, 26, pp. 1176, 1177; also cross-ints. and ans. 13 to 54, pp. 1175 to 1179.

Mr. Buffum, who undertakes to fix dates upwards of forty years ago, is utterly at fault as to other dates which he would be more likely to remember; and even as to very recent dates, his memory is not at all reliable.

Buffum's second deposition, cross-ints. and ans. 15 to 21, inclusive, p. 1356; also, pp. 1357 to 1362, inclusive.

The machinery was purchased by Pitts, individually. Buffum had no interest in the purchase, and would not be very likely to recollect the time of the purchase.

Buffum's second deposition, ints. and ans. 7 and 8, pp. 1353, 1354.
Buffum's first deposition, cross-ints. and ans. 1, 2, 3, 4, 5, 6, pp. 942, 943.

Buffum has an interest in defeating this patent. He is a woolen manufacturer. His machinery is old. He wishes to avoid the royalty on any new that he may have to buy.

Buffum's second deposition, cross-int. and ans. 185, 186, p. 1371; cross-int. 156 and 157, p. 1369.

We therefore submit that Buffum's theory, that the machinery was purchased three or four weeks before Cooper went there, is completely overthrown; also, his next theory, that it was purchased in August, is likewise disproved.

As we have seen, Arnold Smith, who knew more about it than any one else, swears that it came there the last of December, 1824, or early in January, 1825.

Edmund Bacon testifies to the same thing.

Mrs. Caswell's testimony confirms this.

Mrs. Darling shows the Brewster was at Pitts' mill October 25, 1824, and afterwards.

Edmund Bacon testifies it was there more than a month after he went there, which was middle of November, 1824.

Arnold Smith confirms this testimony as to the Brewster.

The testimony of appellants on this point is the very vague and indistinct memory of an interested witness; no record, no account, nor any memoranda of any kind, and after the laspe of forty years, it is utterly unreliable.

It is also quite certain that the machinery which Goulding sold was simply experimental. Pitts and Buffum still continued to operate the old short roll machinery, which would not have been the case had the invention then been perfected.

Wm. Bacon's deposition, ints. and ans. 7, 8, 9, 10, 11, 12, 13, p. 1292.

Arnold Smith's deposition, int. and ans. 20, 23, p. 1277.

Goulding did not get his invention completed till the summer of 1825.

Goulding's deposition, int. and ans. 121, p. 482.

We therefore submit, in relation to the purchase by Pitts of the machinery of Goulding, —

1. That there is no evidence that it contained either of the patented combinations.
2. That at best it was but experimental.
3. That there is no evidence to show that it was obtained before the very last of December, 1824, or early in January, 1825.

The next sale alleged, is alleged to have been made to Truman Clark. The evidence on this point comes from Cooper and George L. Pierce, who were called as witnesses by the appellants; and from John Goulding, Charles Mann, Oliver Ellis, Mason Pierce and Truman Clark called by the appellee.

All that Cooper says is that woollen machinery was sent to Truman Clark before he left Goulding.

Cooper's first deposition, int. and ans. 15, p. 95.

George L. Pierce says that he set up (he thinks it was in the spring of 1825) one jack and a suit of cards at Walpole for Clark. That he can't say whether two or three cards; that the cards had the surface drum, and he thinks the jack had. That the machines were common machines in every respect except the surface drum. That they used to call that machinery Mr. Goulding's to distinguish it from everybody else's. That the cards were for making the perpetual roll.

Deposition of George L. Pierce, ints. and ans. 7, 8, 9, 10, p. 87; cross-int. and ans. 3, p. 88.

It is clear that Cooper and Pierce's testimony can't be true, as Cooper left Goulding in November, 1824, and Pierce fixes the time when this was done in the spring of 1825.

Mr. Goulding says that he made a sale to Truman Clark in 1824, or it might have been the fore part of 1825; and he don't recollect how far the machinery had been perfected.

Goulding's deposition, int. and ans. 126, p. 483; int. and ans. 350, p. 644.

This testimony of Cooper, Pierce, and Goulding is evidently in relation to a roller-jack and some short-roll wool cards, that Mr. Clark had in 1824 or 1825 of Mr. Goulding, not containing the invention in any respect, as will be seen by the testimony of Charles Mann, Oliver Ellis, Mason Pierce, and Truman Clark himself. The long-roll machinery was not sold by Goulding to Clark until 1828, which was some years after he got his patent.

Deposition of Charles Mann, pp. 745, 746, 747, 748, 749, 750 751.

Deposition of Oliver Ellis, pp. 752 to 755, inclusive.

Deposition of Mason Pierce, pp. 755 to 758.

Deposition of Truman Clark, pp. 879 to 882, inclusive.

Truman Clark testifies that he had of Goulding a roller-jack first, and that it was in 1824 or 1825; and that he also had cards of him. That the roller-jack was fed from cans, and that the cards made the short roll.

Truman Clark's deposition, ints. and ans. 9, 10, 11, 12, 13, 14, 15, 16, pp. 879, 880.

Charles Mann's deposition, ints. and ans. 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, pp. 746, 747.

Oliver Ellis also refers to this roller-jack as being there — ints. and ans. 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 19, pp. 752, 753, 754.

Mason Pierce also refers to it — ints. and ans. 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, pp. 756, 757.

Oliver Ellis' testimony we submit is conclusive on the point that Clark got no long roll machinery of Goulding until 1828.

Ellis did not commence to work for Clark until Sept. 3, 1827. He describes the machinery that Clark *then* had, it was short roll machinery,

the old process. He also says the long roll machinery was not there when he went there, and that it came in 1828, and he worked upon it.

Oliver Ellis' deposition, ints. and ans. 4 to 19 inclusive, pp. 752, 753, 754.

Mason Pierce's testimony also conclusively shows that he did not enter Clark's employment until Dec. 5, 1827, that Clark had no long roll machinery *when* he entered his employment. That Clark got the first long roll machinery of Goulding, in 1828 or 1829. Pierce worked upon it himself.

Mason Pierce's deposition, ints. and ans. 3 to 27 inclusive, pp. 755, 756, 757, 758.

Truman Clark and Charles Mann both testify that it was not before 1828. It is also apparent that Geo. L. Pierce had nothing to do with setting up that machinery, but that a man by the name of Upham assisted Goulding in setting it up.

Chas. Mann's deposition, ints. and ans. 27, 28, p. 748.
Oliver Ellis' deposition, cross-int. and ans. 3, p. 755.
Mason Pierce's deposition, ints. and ans. 24, 25, 26, p. 757.
Truman Clark's deposition, int. and ans. 28. p. 881.

Another circumstance to show that this long roll machinery was not sold by Goulding to Clark, until 1828, or 1829 is the fact testified to by Truman Clark, that about that time Upham went to Europe.

Truman Clark's deposition, ints. and ans. 43, 44, p. 889.

Goulding testified before that, on cross-examination, that he sent Upham to France with a suit of cards and jack, in 1829.

John Goulding's deposition, cross-ints. and ans. 669, 670, 671, p. 567. Upham is dead, cross-int. and ans. 611, p. 561.

We therefore say that the evidence proves that the sale of the long roll machinery to Clark was not before 1828.

The next sale alleged to have been made is an alleged sale to Benj. Bussey.

The testimony as to this sale comes from George H. Kuhn, called by the appellants, and from John Goulding, called by appellee.

Mr. Kuhn says he purchased, in the autumn of 1825, the machinery in the mills at Dedham, belonging to Mr. Goulding, for Mr. Benj. Bussey and himself, doing business under a co-partnership. Mr. Bussey was the owner of the mills; that is, he owned the real estate. The machinery was machinery adapted to the manufacture of wool into broadcloths; that he afterwards carried on the business and used that machinery in those mills; that the woolen business was then in its infancy, and some of the machinery was changed from time to time, and the works extended. The Goulding machinery was kept and remained mainly as it was.

Deposition of Geo. H. Kuhn, pp. 132, 133.

This is the only description we have of the machinery.

Mr. Kuhn don't know what alterations were made in the machinery, but he has no doubt alterations were made.

Geo. H. Kuhn's deposition, cross-int. 7, p. 133, 134.

It will not be pretended that the sale to Bussey was until the autumn of 1825, nor is there any description given of the machinery. Goulding speaks of it as the machinery "appertaining to the long roll business."

Ans to int. 122, p. 483.

It is not further described by any witness.

The next question which arises is, whether either sale was more than two years before Goulding applied for a patent. The patent was granted December 15, 1826.

It is clear, then, that the sale to Bussey was not as much as two years before the patent was issued, but was in the autumn of 1825; so that sale may be laid out of the case.

The sale to Truman Clark was after the patent was granted; and that, therefore, is to be laid out of the case.

If the appellants rely upon the sale to Pitts, we reply,—

1st. That no such defence is available by the appellants, as only the defence of general abandonment is set up in the answer, p. 20.

2d. That there is no evidence that the machinery Pitts got of Goulding contained either or any one of the patented combinations.

3d. That the machinery was not complete, but experimental.

4th. That there is no reliable evidence to show that the machinery was obtained by Pitts till late in December, 1824, or early in January, 1825; and the fair preponderance of evidence shows that it was late in December, 1824, or early in January, 1825.

5th. That *the burden of proof is on the appellants to show a sale of the completed machinery, substantially as patented, more than two years before the application for a patent*, and the appellants have utterly failed to show this.

As to the time when the application for the patent was made, we have furnished the Court with all the evidence in our power.

Mr. Goulding's books were all given up to his assignee when he took the benefit of the insolvent law, which was May 1, 1839.

The assignee sold them as old paper.

John Goulding's deposition, cross-int. and ans. 48, p. 497; cross-int. and ans. 53, p. 472; cross-ints. and ans. 538, 539, p. 551.
Date of Warrant in Insolvency, p. 664.

Mr Goulding has no record by which he can fix the date of his application.

The patent office was destroyed by fire in 1836, and the record of the application is not in existence.

Goulding testifies that he went abroad to find if anything interfered with his invention: that he found nothing, and returned home as soon as he could leave, and proceeded immediately to procure a patent in this country.

Int. and ans. 123, p. 483.

He left Europe, April, 1826.

Ans. to cross-int. 762, p. 579.

There was no reason why Goulding should defer his application.

He swears this sale to Pitts was not as much as two years before he applied for his patent.

John Goulding's deposition, int. and ans. 207, p. 634; cross-ints. and ans. 1067, 1068, p. 640, 641.

The burden of proof as to the time of the application is also on the appellants.

The certificate of the Secretary of State, Exhibit T², p. 1538, is not admissible for any legitimate purpose in this case.

The law of September 15, 1789 (Ch. 14, sec. 5, 1 Stat. at Large, p. 69) provides, "That the said Secretary shall cause a seal of office to be made for said department, of such device as the President of the United States shall approve, and all copies of records and papers in the said office authenticated under the said seal, shall be evidence equally as the original record or paper."

The register of letters, referred to in this certificate, is not, within the meaning of this statute, either a record or a paper, copies of which can thus be made evidence; and if such register could be regarded as a record, it would be inadmissible, if produced, to establish the contents of the letters said to have been written by Goulding.

But even if the original record, or a copy thereof, would be admissible, this certificate is not a certificate of a copy of the register, but is a certificate of supposed facts and inferences, deduced by the Secretary of State therefrom.

If the certificate is admitted, it proves nothing. It does not prove that any of the letters related to this patent. It has no tendency to prove when the patent was applied for, nor the contents of any of the letters.

It does not appear whether the register was a register of all letters received at the department of State, or only of a part of them. It is in evidence that Goulding got seven patents on woolen machinery after Dec. 14, 1826, and before Dec. 31, 1829, p. 284 to 287, inclusive, and other patents besides (Jno. Goulding's deposition, int. 174, p. 492),

and only three letters from him are said to appear on that register during that period.

That register is therefore not a register of all the letters received.

Goulding made other inventions about this time.

John Goulding's deposition, int. and ans. 36, 38, p. 469, 470.

But even if this certificate of the Secretary of State is admissible, and can be construed to relate to the patent of Dec. 15, 1826, and it be argued that the letter of Nov. 15, 1826, received at the Patent Office Nov. 21, 1826, contained the application for this patent, all this fails to show that the sale to Pitts was more than two years before the application, as the preponderance of proof is that the sale did not occur till late in Dec. 1824, or early in January, 1825; and the Brewster, which was given in part payment for the machinery obtained of Goulding, by positive proof, was at Pitts and Buffum's when Edmund Bacon went there Nov. 14, 1824, and was there for nearly two months afterwards.

This defence is not a meritorious one. A harsh provision of the law is invoked to defeat a long standing title. Forfeitures are not favored in the law and will only be enforced upon clear and positive proof, and the appellants have utterly failed on this as on all the other defences set up.

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For Appellee.

